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VOLUME XVI

DECISIONS OF THE

U. S. INTERSTATE COMMERCE COMMISSION

OF THE UNITED STATES

APRIL, 1909, TO JUNE, 1909

REPORTED BY THE COMMISSION



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INTERSTATE COMMERCE COMMISSION.

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JAMES S. HARLAN, OF ILLINOIS.

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INTERSTATE COMMERCE COMMISSION REPORTS.

No. 1759.

**R. HUDSON BURR, JOHN L. MORGAN, AND NEWTON A.
BLITCH, AS RAILROAD COMMISSIONERS OF THE
STATE OF FLORIDA,**

v.

SEABOARD AIR LINE RAILWAY ET AL.

Submitted February 4, 1909. Decided April 5, 1909.

1. The complaint involves the relation of rates on sea-island cotton from Alachua, Gainesville, and Hawthorne, Fla., to Savannah, Ga., the respective rates being 39, 40, and 45 cents per 100 pounds via each of the defendant lines. The Florida railroad commission regard this adjustment as an undue preference to Alachua; *Held*, That the complaint is well founded as to the Seaboard Air Line Railway, but no findings are made as to the Atlantic Coast Line Railroad Company because of its greater length of haul.
2. The rate of 39 cents per 100 pounds on sea-island cotton from Alachua to Savannah, when shipped over the Seaboard Air Line, will afford it reasonable compensation for the haul, and will therefore be a reasonable rate over that line for the future. The 40-cent rate over that line from Gainesville to Savannah and the 45-cent rate from Hawthorne to Savannah are unreasonable and unduly discriminatory. The rate from each point to Savannah ought not in the future to exceed the rate here fixed over that line from Alachua to Savannah.

Louis C. Massey for complainants.

Ed. Baxter, R. Walton Moore, Sloss D. Baxter, and W. E. Kay for defendants.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

Gainesville, Alachua, and Hawthorne, in the state of Florida, are each served by the two defendants and each has access to Savannah, in the state of Georgia, by a one-line haul over the rails of both systems.

The complaint involves the relation of rates on sea-island cotton from the three points. Alachua is about 15 miles east, and Hawthorne

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18 miles west, of Gainesville; and the three towns are in Alachua County, which is the center of a more or less extensive production of sea-island cotton, the greater part of which is marketed at Savannah. The rate from Alachua to Savannah is 39 cents per 100 pounds over the lines of each of the defendants. From Gainesville the rate is 40 cents. From Hawthorne the rate was 68 cents, but after the filing of the complaint herein it was reduced to 45 cents per 100 pounds, that being the present rate from that point. The railroad commissioners of Florida regard this adjustment as an undue and an unlawful discrimination against Gainesville and Hawthorne when the rates to Savannah from those points are compared with the 39-cent rate from Alachua. They have therefore filed this complaint, in which they demand the discontinuance of the alleged discrimination and insist upon the application of the 39-cent rate from Gainesville and Hawthorne.

In our judgment the complaint is well founded, and we so find upon the record. The haul to Savannah from Alachua over the rails of the Seaboard Air Line is 207.9 miles in length; from Hawthorne the distance over the rails of that system is precisely the same; and the haul from Gainesville is 207.3 miles, or just six-tenths of a mile shorter than from the other two points. So small a difference in distance in the universal practice of interstate carriers is disregarded in a haul of that length and should be deemed a negligible quantity here. It follows, therefore, that these three shipping points are entitled to enjoy a common rate on sea-island cotton to Savannah, when carried by that defendant, unless there are substantial features in the transportation conditions surrounding the traffic from the three points that may fairly be said to justify a lower rate from one point over that line than from the other two points. It is important to have a common rate if the conditions justify it, for the three towns are strong competitors with one another in the handling of the local production of sea-island cotton. Each maintains a cotton gin; and it is the custom of the ginners to buy the cotton outright from the farmers and to ship it to Savannah, where it is sold at the market price. The quotations at Savannah are the same whether the cotton comes from Gainesville, Alachua, or Hawthorne. The difference in rates, 1 cent and 6 cents per 100 pounds against Gainesville and Hawthorne, respectively, must therefore be absorbed either in the price paid to the producers at the gin or in the profits of the ginners.

Nothing can be more clear than that the act was intended to prohibit undue discriminations against localities as well as against persons; and unless the conditions surrounding the traffic from Gainesville and Hawthorne are such as to warrant higher rates from those

points than are made available to shippers of sea-island cotton from Alachua, the present rate adjustment of the Seaboard Air Line is unlawful, because unduly discriminatory. No such relation of rates may lawfully stand except upon an affirmative showing that there is some sound reason for putting two of the communities at a disadvantage when their rates are compared with the rate from the third point. There is no such showing made, nor is there any pretense by the Seaboard of any differences in transportation conditions justifying a discrimination in rates so far as the haul over its line is concerned.

The only suggestion to be found in the record in that connection is the fact that the hauls from the three points over the rails of the Atlantic Coast Line are longer than the hauls over the Seaboard Air Line; and there is more of a difference over those rails in the distances of the three towns from Savannah. From Alachua the haul over the rails of that system is 234 miles; from Hawthorne the distance is 238 miles; and from Gainesville the haul to Savannah is 249 miles. Although the haul from Hawthorne is only 4 miles longer than the haul from Alachua to Savannah, the rate from Hawthorne, until after the complaint was filed, was 29 cents per 100 pounds higher than the Alachua rate. The rate from Hawthorne over that line is even now 6 cents higher than the Alachua rate. It is true that traffic from Hawthorne, when carried by the Atlantic Coast Line, moves through Palatka, while from Alachua it is carried through High Springs, Live Oak, and Waycross. But there is no claim that the cost of transportation through the former junction is greater than the cost over the latter route, and we see no reason why it should be. The record is bare of any explanation of the 68-cent rate, until lately in effect from Hawthorne, nor does it disclose any reason why Hawthorne should now pay 6 cents more per 100 pounds on sea-island cotton carried to Savannah over the Atlantic Coast Line than Alachua now pays.

An effort is made on the part of both defendants to justify the lower rate from Alachua as compared with the present rate from Gainesville by the fact that the haul from Alachua over the Atlantic Coast Line is shorter by nearly 16 miles than the haul over that line from Gainesville. This, as we understand them to say, justifies a 40-cent rate from Gainesville as compared with a 39-cent rate from Alachua. We are inclined to think that a distance of 16 miles in the haul may justify an addition of 1 cent per 100 pounds to the rate. As a matter of fact, the 39-cent rate from Alachua, although an interstate rate, seems originally to have been based upon the Georgia distance tariff, under which the rate from Gainesville, involving an additional haul of 16 miles, would be 40 cents per 100

pounds. So far, therefore, as the rates over the Atlantic Coast Line from those two stations are concerned, we find in the record no grounds for just criticism. We see no reason, however, why the rate over that line from Hawthorne should in any event exceed the rate from Gainesville.

But the Seaboard Air Line is the short line to Savannah from each of the three points. In common practice the short line between two designated points makes the rates between those points, and as the hauls over the Seaboard system from these three shipping centers are of the same length, no reason occurs to us why the three communities should not enjoy a common rate over its rails to Savannah. That line is not entitled to fix its rates on the basis of the longer hauls over the Atlantic Coast Line, or to maintain a discrimination in rates not justified by the length of the several hauls over its own rails to Savannah, simply because the difference in the length of the hauls over the rails of the Atlantic Coast Line may justify a difference in rates from the three points over that line. The Atlantic Coast Line was operating from Alachua before the Seaboard Air Line was built into that point. The latter line found the 39-cent rate in effect from that point to Savannah over its competitor's line and adopted it as its own rate. Apparently the Seaboard Air Line, notwithstanding its equal mileage to Savannah from each of the three points, also adopted as its own the higher rates of the Atlantic Coast Line from Hawthorne and Gainesville. It thus deprived Hawthorne and Gainesville of the benefit to which they were naturally entitled upon the opening up of a new and a shorter route to Savannah than was theretofore offered to them by the Atlantic Coast Line.

As heretofore stated, we see no reason why the Atlantic Coast Line should demand on sea-island cotton from Hawthorne any greater rate than it demands on a movement of that commodity from Gainesville to Savannah. But we shall make no findings and shall enter no order as to the rates of that defendant. The greater length of its haul from Gainesville entitles it to charge more than it demands on shipments from Alachua, and there may be conditions surrounding the traffic from Hawthorne, although none are apparent from the record, to justify it in demanding the additional 6 cents per 100 pounds. It is clear, however, that no conditions exist to warrant the Seaboard Air Line in making higher rates from any of the three points than it makes from the other two. We therefore find that the maintenance by that defendant of higher rates from Gainesville and Hawthorne to Savannah than the rate maintained by it at the same time from Alachua to the same destination subjects those two points to an undue prejudice, disadvantage, and discrimination contrary to

the provisions of the law, and that the rate from those two points to Savannah ought not to exceed the rate from Alachua.

We come now to the question of a reasonable rate for the future on sea-island cotton to Savannah from each of the points in question over the rails of the Seaboard Air Line. It is urged by the defendants that the rates complained of are unreasonably low; that the Seaboard Air Line is in the hands of a receiver; that its Florida traffic is carried at a loss; that its deficit in 1904 was \$291,133.06, and \$156,203.86 in 1907; that sea-island cotton is twice as valuable as upland cotton, which loads more heavily; and that sea-island cotton ought, therefore, to take a higher rate than the present rates which are applicable on all classes of cotton. These matters are obviously not without importance, but the unfavorable financial condition of that defendant can not lawfully be remedied either by imposing unduly discriminatory rates on Gainesville and Hawthorne, or by imposing upon any of these three points rates that are excessive and unreasonable, and therefore unlawful. The Atlantic Coast Line for nearly ten years has maintained a rate on sea-island cotton from Alachua to Savannah of 39 cents per 100 pounds. As heretofore stated, that is the rate that would be required under the Georgia distance tariff for a haul of 234 miles. But, being an interstate rate, the Atlantic Coast Line was not compelled by the Georgia distance tariff to adopt it. In other words, it was a voluntary rate. The Seaboard Air Line, finding it in effect over the lines of its competitor, made the same rate over its own lines from Alachua. While it doubtless did this as an economic necessity and in order to participate in the cotton traffic from that point, nevertheless the voluntary maintenance of the rate for so long a period of time by the Atlantic Coast Line leads us strongly to the conclusion that it was found a compensatory rate by that line for its haul of 234 miles. If so, we see no reason why it should not be a fairly compensatory rate to the Seaboard Air Line for its materially shorter haul of 207 miles.

Without extending further this review of the facts, it will suffice to say that we find that a rate of 39 cents on sea-island cotton from Alachua to Savannah, when shipped over the Seaboard Air Line, will afford it reasonable compensation for the haul, and will therefore be a reasonable rate over that line for the future; we further find that the 40-cent rate over that line from Gainesville, and the 45-cent rate from Hawthorne, are unreasonable, besides being unduly discriminatory, and that the rate from each point to Savannah ought not in the future to exceed the rate here fixed over that line from Alachua to Savannah.

An order will be entered in accordance with these conclusions.

No. 1767.
LINDSAY BROTHERS
v.
BALTIMORE & OHIO SOUTHWESTERN RAILROAD COM-
PANY ET AL.

Submitted February 10, 1909. Decided April 5, 1909.

1. Defendants' joint through rate of 29 cents per 100 pounds on a shipment of vehicles from Lawrenceburg, Ind., to Milwaukee, Wis., was an unreasonable rate at the time of the shipment, and should not have exceeded the combination of local rates of 25½ cents per 100 pounds, which last-named rate is found reasonable for the future between the points in question. Reparation awarded on that basis.
2. The Commission again insists on the principle that in the absence of a justifying explanation a through rate in excess of the sum of the locals is an unreasonable rate.
3. While water competition may be availed of by a carrier as its justification and excuse for rates that are lower than would otherwise be lawful, the existence of such competition is not in itself a ground upon which a shipper may demand a lower rate. It is the privilege of a carrier, in its own interest, to meet such competition, but it is not the privilege of a shipper to demand less than normal rates because of the existence of a competition which the carrier in its own behalf does not choose to meet.

H. F. Lindsay for complainants.

Robert S. Alcorn for Baltimore & Ohio Southwestern Railroad Company.

S. A. Lynde for Chicago & Northwestern Railway Company.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

On November 24, 1906, the complainants shipped a carload of vehicles over the lines of the defendant carriers from Lawrenceburg, in the state of Indiana, to Milwaukee, in the state of Wisconsin. The shipment weighed 21,600 pounds, and at destination freight charges amounting to \$62.64 were collected, based upon a joint through class rate of 29 cents per 100 pounds. It is asserted by the complainants that at the time the shipment moved there was in effect between the points in question a combination through rate of 22

cents per 100 pounds, the factors of which were a local class rate of 17 cents per 100 pounds from Lawrenceburg to Chicago and a class rate of 5 cents per 100 pounds from Chicago to Milwaukee. It is to be noted, however, that the latter rate was applicable only on shipments of vehicles originating east of the Illinois-Indiana state line and was therefore not a local rate, but a proportional rate. The local class rate then in effect from Chicago to Milwaukee was 8½ cents per 100 pounds.

The prayer of the petition is based upon the accepted rule that a through rate in excess of the sum of the local rates is ordinarily an unreasonable rate; but the complainants demand reparation in the sum of \$15.12, an amount that is not based on the sum of the local rates then in effect, but on the alleged combination rate made up, as above explained. The petition concludes with the prayer that the defendants be required for the future to maintain as a maximum a through rate on vehicles in carloads of 22 cents per 100 pounds, or such other rate as may seem reasonable and just to the Commission.

Without entering upon a detailed statement of the history of the through and local rates on vehicles between the points in question, it will suffice to say that it appears from the record and from an examination of our tariff files that when the shipment in question moved the joint through rate was 29 cents, the sum of the local rates was 25½ cents, and, as heretofore explained, the local 17-cent rate into Chicago and the 5-cent proportional out made the alleged through charge of 22 cents per 100 pounds. On February 28, 1907, which was about ninety days after the date of the shipment, the defendants published a joint through rate of 22 cents per 100 pounds, evidently on the theory that they were thus aligning the cost of through transportation between the points in question with the alleged combination rate. This joint through rate of 22 cents was maintained until June 25, 1908, when it was canceled, leaving in effect a joint through rate of 33 cents per 100 pounds. The latter rate was in effect when the complaint was filed on October 2, 1908, and remained in effect until November 5, 1908, on which date the defendants established the present joint through rate of 25½ cents per 100 pounds, this being the sum of the local rates which have not been changed since the date of the movement in question.

Although it is averred in the answer of the Baltimore & Ohio Southwestern that the 33-cent rate was reasonable, no substantial effort is made in the record to defend even the reasonableness of the joint through rate of 29 cents per 100 pounds, at which the freight charges were actually assessed; and in view of the fact that the sum of the local rates then in effect was 25½ cents, that the present joint through rate is 25½ cents, and that within three months after the

date of the movement the defendants established a joint through rate of 22 cents per 100 pounds, which was maintained for over a year, it is difficult to see how either the 33 or the 29 cent rate could well be defended. It is to be inferred, in fact, from the record, that the defendants would not object to making reparation to the complainant on the basis of the so-called combination rate of 22 cents per 100 pounds. But they object to any order requiring them to maintain for the future between the points in question a rate on vehicles less than the present joint through rate of 25½ cents per 100 pounds.

We must insist upon the principle that in the absence of a justifying explanation a through rate in excess of the sum of the locals is an unreasonable rate. The complainants' case, however, proceeds upon the theory that the alleged combination rate of 22 cents per 100 pounds is the proper measure of what was a reasonable charge for the transportation of vehicles between the two points at the date of the shipment. The defendants met the issue thus tendered by offering testimony tending to show that the supposed 22-cent rate was compelled by the competition of water lines between Chicago and Milwaukee, which they did not permit to influence the joint through rate. We think it clear that while water competition may be availed of by a carrier as its justification and excuse for rates that are lower than would otherwise be lawful under sections 2, 3, or 4 of the act, the existence of such competition is not in itself a ground upon which a shipper may demand a lower rate. It is the privilege of a carrier, in its own interest, to meet such competition, but it is not the privilege of a shipper to demand less than normal rates because of the existence of a competition which the carrier in its own behalf does not choose to meet.

But the alleged combination rate of 22 cents per 100 pounds is not a proper basis upon which to invoke the rule that a through rate in excess of the sum of the locals is an unreasonable rate. It will be remembered that the factors of that supposed rate were a local rate of 17 cents into Chicago and a proportional rate of 5 cents from Chicago to Milwaukee. We do not regard this proportional rate as a live rate at the time of the movement; at least it was not a rate that could then be used in connection with a shipment from Lawrenceburg. A specific through rate was in effect, and was the only rate legally applicable. It is true that the proportional rate was then carried in the tariffs of the defendant, the Chicago & Northwestern, with a note that it was applicable on movements from points east of the Indiana-Illinois state line. This, however, did not make it a legal rate, in view of the existence of a published through rate. A through shipment from Lawrenceburg could lawfully move only under the joint through rate

that was then in force; and a shipment billed locally to Chicago could not be rebilled to Milwaukee on the 5-cent proportional rate. It could have moved only under the local rate of $8\frac{1}{2}$ cents then in effect from Chicago to Milwaukee. In other words, the sum of the locals then in effect was $25\frac{1}{2}$ cents, and this alone, under the ruling to which the complainants appeal, is the true and proper measure of the reasonableness of the through rate then in effect, and is the only basis upon which relief may be granted on this complaint.

We find, therefore, that the rate of 29 cents per 100 pounds on a shipment of vehicles from Lawrenceburg to Milwaukee was an unreasonable rate at the time of the shipment, and should not have exceeded the rate of $25\frac{1}{2}$ cents per 100 pounds, which rate we also find would be a reasonable rate for the future between the points in question. On that basis we further find that the complainants are entitled to reparation in the sum of \$7.56, with interest.

An order will be entered in accordance with these conclusions.

16 I. C. C. Rep.

No. 2107.

CHILTON MALTING COMPANY, LIMITED,
v.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY
COMPANY.

Submitted February 5 1909. Decided April 5, 1909.

Defendant's rate of 13½ cents per 100 pounds formerly applied on carload shipments of malt from Chilton, Wis., to Kansas City, Mo., found unreasonable, and the present rate of 10 cents per 100 pounds for such transportation held to be reasonable. Reparation awarded.

F. J. Egerer for complainant.

William Ellis for defendant.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

Between June 11 and July 25, 1908, the complainant shipped from Chilton, in the state of Wisconsin, 11 carloads of malt of the aggregate weight of 455,440 pounds, consigned to the Kansas City Breweries Company at Kansas City, in the state of Missouri. Transportation charges were collected at destination on the basis of a rate of 13½ cents per 100 pounds, which was then the legal rate, and amounted in the aggregate to \$626.24. It is this rate that is attacked in the complaint as being unreasonable and excessive and therefore unlawful.

It appears from the record that during the month of April, 1908, the complainant contracted with the Kansas City Breweries Company to deliver to it 25,000 bushels of malt in gradual monthly shipments. The rate on malt then in effect over the lines of the defendant between Chilton and Kansas City was 10 cents per 100 pounds, and the contract between the consignor and the consignee was made on the basis of that rate, the complainant having no knowledge of any anticipated changes in the published tariffs. The shipments were commenced on June 11 and were concluded by July 25. But on June 6 the rate, above mentioned, of 13½ cents per 100 pounds went into

effect, and charges were collected, as stated, on that basis. On August 1, 1908, the previous rate of 10 cents was restored and is still in effect.

On these facts, and upon its allegations that the rate of $13\frac{1}{2}$ cents per 100 pounds was excessive and unreasonable, the complainant demands reparation on its shipments in the sum of \$170.80.

On the record we find that all the material allegations of the complaint are sustained, and that the complainant is entitled to reparation in the amount above mentioned with interest. We also find that the rate on malt in carloads between the points in question ought not for the usual period in the future to exceed 10 cents per 100 pounds.

It will be so ordered.

16 I. C. C. Rep.

No. 1291.

BOARD OF TRADE OF WINSTON-SALEM, N. C., AND CITY
OF WINSTON, N. C.,

v.

NORFOLK & WESTERN RAILWAY COMPANY.

Submitted October 22, 1908. Decided April 12, 1909.

Complainants allege that rates on bituminous coal in carloads from the Pocahontas (Va.) district to Winston-Salem and Durham, N. C., are unreasonable and ask that defendant be required to establish the same rates to said points that are made by it to points east of Norfolk, Va., and Lynchburg, Va. Reparation is also asked; *Held*, (1) That circumstances and conditions of transportation are different at main-line points from Lynchburg to Norfolk than at Winston-Salem and Durham on branch lines to the south from the main line, and defendant may make higher charges to the latter points. (2) That under the circumstances shown the rate charged Winston-Salem on soft coal in carloads is unreasonable to the extent that it exceeds \$2.10 per ton, and that the charge to Durham is unreasonable to the extent that it exceeds \$2.20 per ton. Reparation is denied.

Manley & Hendron and L. J. Graham for complainants.

R. Walton Moore and Lucien H. Cocke for defendant.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

This is a complaint that the rate of \$2.30 per ton of 2,000 pounds on steam coal and \$2.40 per ton on domestic coal, in carloads, charged by defendant for transportation from the Pocahontas (Va.) coal district to Winston-Salem, N. C., is unjust and unreasonable and unduly discriminates against consumers in Winston-Salem and in favor of consumers at other points on defendant's railway. Reparation is asked.

Effective December 1, 1908, defendant filed and published a tariff abolishing the rates on domestic coal, and making the coal rates to Winston-Salem and Durham, whether steam or domestic, the same, \$2.30 per ton from the Pocahontas district. In view of this change, now effective on the entire system of defendant, there is but one rate to be herein considered.

In the case of *Corporation Commission of the State of North Carolina v. N. & W. Ry. Co. et al.*, Docket No. 1389, among other things rates on coal from the Pocahontas district to Winston-Salem and

Durham, N. C., are challenged as unreasonable and unjust. It was agreed at the hearing in that case that any evidence taken with respect of the rates on coal to the points named should be considered in connection with the evidence in this case. Therefore, the question of coal rates from the Pocahontas district to both Durham and Winston-Salem will be disposed of in this report.

Winston-Salem is a city of some 25,000 inhabitants, situated about 122 miles south of Roanoke, Va., at the terminus of what is known as the Winston-Salem division of defendant's system. Durham has about the same population and is situated 117 miles south of Lynchburg, Va., at the terminus of the Durham division of the system.

Defendant's railway extends from Columbus and Cincinnati, Ohio, to Norfolk, Va., with branch lines to Hagerstown, Md., Bristol, Tenn., and Norton, Va. The Pocahontas coal fields are located on the main line at an average distance of about 133 miles west of Roanoke. The lines from Lynchburg to Durham and from Roanoke to Winston-Salem were built in the years 1891 and 1892 by corporations in no way associated with the Norfolk & Western Railway Company. Both of these lines were acquired by the defendant in 1893 by the issuance of its securities to the amount of \$2,451,337.51 for the Winston-Salem line and \$1,531,700 for the Durham line.

Coal is shipped from the Pocahontas district to Winston-Salem, via Roanoke, an average distance of 255 miles, and the rate is \$2.30 per ton. Shipments to Durham are made via Lynchburg, 55 miles east of Roanoke, an average distance of 304 miles, and the rate is the same as to Winston-Salem.

The average distance from the Pocahontas coal district to certain illustrative points and the rates per ton per mile are shown by the following table:

	Average distance.	Rate per ton.	
		Coal.	Per mile.
	<i>Miles.</i>		<i>Cents.</i>
Roanoke, Va.....	133	\$1. 20	0. 80
Richmond, Va.....	325	1. 50	. 46
Petersburg, Va.....	309	1. 50	. 50
Norfolk, Va.....	391	1. 50	. 40
Lynchburg, Va.....	187	1. 50	. 80
Winston-Salem, N. C.....	255	2. 30	. 90
Charlotte, N. C.....	322	2. 45	. 76
Durham, N. C.....	304	2. 30	. 75
Greensboro, N. C.....	284	2. 30	. 80
Raleigh, N. C.....	364	2. 30	. 63
Elkin, N. C.....	310	2. 45	. 79
Wilkesboro, N. C.....	329	2. 45	. 74
Salisbury, N. C.....	306	2. 45	. 79
Statesville, N. C.....	309	2. 65	. 85
Columbia, S. C.....	431	2. 45	. 76
Greenville, S. C.....	429	2. 65	. 62
Spartanburg, S. C.....	414	2. 65	. 63
Hagerstown, Md.....	373	1. 50	. 40

During the year ending June 30, 1907, there were shipped to Winston-Salem and for points beyond from Norfolk & Western coal districts 1,079,568 tons of coal, of which 96,376 tons stopped at Winston-Salem, or about 9 per cent of the total. Of the amount which did not pass Winston-Salem, 32,869 tons were commercial coal and the remainder was used for railway fuel. During the same year the defendant carried to Durham 346,291 tons of coal from Norfolk & Western districts, of which 37,488 tons were for commercial use at that point and 1,715 tons for railway fuel. The remainder was turned over to the Southern and Seaboard Air Line.

Defendant denies that the rates complained of are unreasonable, and insists that they are justified by the conditions under which coal is transported to Winston-Salem and Durham. It is claimed that operating expenses on the Winston-Salem division are 74 per cent greater than on the main line east of Roanoke, and still greater on the Durham division. These divisions, it is stated, are more expensive to operate because of lighter traffic and smaller train loads. Numerous heavy grades occur on both divisions. On the Winston-Salem line there are 79 ascending grades, with a total rise of 2,878 feet, as compared with 49 on the main line east of Roanoke, with a total rise of 1,830 feet. The Durham line has 81 grades, with a total rise of 2,820 feet. On both lines there are many sharp curves. The flow of traffic is broken at Roanoke and Lynchburg and the coal forwarded to Winston-Salem and Durham with miscellaneous shipments. Movement on the main line is in solid train loads.

It is argued in behalf of defendant that, in the absence of any showing that the rates complained of unduly exceed the cost of service, the only ground upon which they can be held to be unreasonable *per se* is that they yield an unreasonable profit to the carrier. It is further insisted that the earnings of the two lines are not such as to warrant a conclusion that the rates in question are excessive. It is claimed that these lines are so operated that the expense can be determined with approximate accuracy. Statements compiled by defendant's auditor show that net earnings of the Winston-Salem line from 1899 to 1907, inclusive, have amounted to an annual average of \$220,409. Out of this an average yearly expenditure of \$55,148 has been required to improve tracks, bridges, and other facilities, while interest charges upon the cost of the property amounted annually to \$120,135. Deducting these sums from the net earnings leaves an average annual surplus of \$45,106. During the same period the statement shows an average annual deficit of \$31,002 on the Durham line. It is also shown that for the year ending June 30, 1907, the cost incurred to earn a dollar on the Winston-Salem division was 70 cents and on the Durham division 87 cents. The average cost on the entire system, including these divisions, for the same period was 65.8 cents.

Defendant is one of the great coal-carrying roads of the country. During the year ending June 30, 1907, there were carried on the system more than 9,000,000 tons of coal, yielding an average revenue of 3.69 mills per ton per mile. During that period shipments of coal and coke represented 58.5 per cent of the entire tonnage transported and 50.3 per cent of the revenue of the system. The average rate per ton per mile on all traffic is very low. Compared with that on coal for different years since 1903 it shows as follows:

	1893.	1897.	1900.	1907.
	Cent.	Cent.	Cent.	Cent.
All traffic.....	0.516	0.446	0.430	0.405
Coal.....	.350	.300	.270	.369

Defendant claims that because of competition at Norfolk and points west thereof its rates on coal are unreasonably low, and that low proportions of through rates, which it is obliged to accept on shipments to southern and western points, justify higher rates to points on its own line where competition is not controlling. It is further pointed out that the average rate per ton per mile on the Winston-Salem division is 6½ mills, and on the Durham division about the same. These rates, it is contended, are extremely low and are brought about by the low proportions on through business, which average about 4 mills. For the year ending June 30, 1907, coal constituted 68 per cent of the tonnage on the Winston-Salem division and 52.6 per cent on the Durham division. Under these circumstances the contention is made that a reduction of the rates in question to the Lynchburg basis, which is asked by complainants, would cause such loss of revenue as to prevent the earning of any surplus on the Winston-Salem line and materially increase the annual deficit on the Durham line.

Defendant asserts that there has been free and increasing movement of coal to Winston-Salem and Durham; that these cities have grown rapidly; and their business enterprises have thrived. It is argued therefrom that the rates are not oppressive and can not fairly be held to be unreasonable. It is also suggested that there are a number of important points in North Carolina which take the same, or nearly the same, rates as Winston-Salem and Durham, and that any reduction to those towns would disturb the rate adjustment existing over a wide scope of territory.

It appears that a number of cities and towns in North Carolina and Virginia take the same rates on coal from the Pocahontas district as Winston-Salem and Durham. These rates are applicable to points as far west as Mount Airy, N. C.; to points as far east as Greensboro

and Raleigh, N. C., and include Danville, Va.; as far north as Keysville, Va.; and as far north and east as Franklin, Va., including intermediate points. Points south and east of Durham take 10 cents per ton higher and points south of Winston-Salem 5 cents per ton higher as far south as Charlotte. Points south of Greensboro take a rate 10 cents per ton higher. It is insisted by defendant that these rates were made and maintained to put the different communities on a parity and that there was also taken into consideration competition with coals from the Tennessee and other Virginia mines served by other carriers.

Prior to the purchase by defendant of the Winston-Salem and Durham lines the rate to Winston-Salem from Pocahontas was 25 cents per ton in excess of the present rate. Coal at that time was delivered to the Southern at Lynchburg and transported via Greensboro, N. C. When the Winston-Salem line became part of defendant's system the haul to Winston-Salem was shortened some 75 miles and rates were made the same as to Greensboro. It appears that in 1903 rates from Pocahontas to main-line points and to all points on the Winston-Salem line except Winston-Salem were reduced, on an average, about 10 cents per ton. The reduction in some cases was 30 cents per ton.

Nevertheless, we are of opinion that the rates in question are somewhat too high. Among the considerations which lead to this conclusion are the following: (1) A rate of \$2.30 per ton for a haul of 255 miles over the line of a single carrier, yielding 9 mills per ton per mile, is comparatively high for any low-grade traffic. (2) This rate is higher than the rate to any other point on defendant's system for a similar distance. (3) It is higher than most rates on the same traffic for similar distances over the lines of other carriers serving the same section of country. (4) The rate yields more per ton per mile than the average rate on all traffic on defendant's system and exceeds the average rate on all traffic on the Winston-Salem division. We can not agree with the contention of defendant that because rates on other parts of its system are forced down by competition to a very low point there is justification for a high rate to Winston-Salem. That point is entitled, as a matter of right, to the reasonable rate which its location and other advantages dictate, without taking into account conditions which bring about lower rates to other points. Neither is the contention that it is necessary to charge high rates to Winston-Salem because of low proportional rates on through shipments over the Winston-Salem line at all convincing.

While it is well settled that the divisions of a through rate furnish no fair or just criterion by which to measure intermediate local rates on the same line of transportation, yet it is worthy of note in this

case that through rates from Pocahontas to points beyond on the Southern Railway, which are the same as the Winston-Salem rate, are so divided that the Southern in a majority of cases gets more than the Norfolk & Western, although none of these points is as far from Winston-Salem as the latter is from Pocahontas. Under such divisions the amount which the defendant receives as its proportion of the through rate may be too low, and its earnings therefrom not sufficient, but this does not justify the maintenance of excessive rates to Winston-Salem or other points on its own line.

It is argued in behalf of complainants that the scheme of apportioning earnings on coal shipments to Winston-Salem and beyond is unfair to the Winston-Salem division and gives to the main line part of the haul an undue proportion. The defendant insists that the apportionment yields more than is properly due to the Winston-Salem line. However this may be it is not a matter which we consider necessary to determine in this case. If the issue presented involved rates affecting traffic of all kinds over defendant's entire system as well as over the lines to Winston-Salem and Durham, and the change in rates demanded would deplete the earnings below the point of fair remuneration to holders of securities, it would become necessary no doubt to consider the net income and surplus derived from the system business as well as from the Winston-Salem and Durham lines. But where particular rates on a particular commodity between particular points are challenged the question of net earnings on the particular lines involved is not so important, unless it be shown that the margin of profit is so small on the system's business as a whole that a reduction in the particular rates would reduce the whole income below the reasonable profit point.

There appears to be no question in this case that the system as a whole is, under present rates, earning fair returns to security holders. The earnings permit the laying aside annually of large sums for betterments and the accumulation of a reasonable surplus. While the earnings and the sums set aside have been reduced somewhat during the recent depressed times, yet the system is not in such a condition as to require the passing of dividends or the elimination of its surplus. To divide the system into its constituent elements and to require that each shall show a surplus commensurate with that yielded by the business of the system as a whole in justification of a particular rate on one commodity is not the usual, and it is not believed to be the proper, basis upon which to measure the justness of such rate.

In determining questions of this character the Commission takes into consideration, with other matters, the revenue of the carrier. A reasonable reduction in rates on coal to Winston-Salem and Durham would not seriously impair the earnings of the system, and there

is evidence tending to show that such reduction would increase consumption at those points. The Commission is also bound to consider the relation that rates involved in any case bear to rates at other points and take into account the probable result to such other points from a change in that relation. We have recently (*Black Mountain Coal Land Co. et al. v. S. Ry. Co. et al.*, 15 I. C. C. Rep., 286) considered the relation of rates from the Tennessee coal fields into Carolina territory, which to some extent brought under review the rates on coal to the general territory involved in this case; and the conclusion reached in that case was after due consideration of the relationship that rates to the points here involved bear to rates to points south and east thereof.

It is not contended by defendant that rates on coal are made on the same zone system that prevails with respect of class and commodity rates from the Virginia cities. So far as the testimony shows a reduction in rates to Winston-Salem and Durham would not necessarily be followed by a reduction to other points taking the same or higher rates, particularly with respect of points where transportation and other conditions are different. The Commission, however, should exercise care to prevent undue discrimination as the result of any conclusion reached with respect of rates to any particular point. This we have endeavored to do and also to give proper consideration to the question of possible reductions to other points that may be the result of reductions made in this case.

Complainants ask that the rates to Winston-Salem and Durham be made the same as to Roanoke and Lynchburg, \$1.50. This, in our opinion, ought not to be required. Transportation conditions on both the Winston-Salem and Durham lines are materially different from those prevailing between main-line points or between points on the system where main-line conditions control. Rates were not made and have not been maintained to Winston-Salem and Durham under the conditions of competition that existed on the main line and on the line to Hagerstown. The cost of service on the lines in question is materially higher than on the main line between points of similar distance.

While it is true that the rates to Winston-Salem and Durham appear to be higher than rates elsewhere on the system, they are not, all the circumstances considered, greatly out of line with rates generally to similar points in the same territory—that is to say, the average distance from Pocahontas to all points to which the same rates are now applicable as to Winston-Salem and Durham is considerably greater than the distance to the two points in question. This reduces what appears to be upon the face of the tariffs an unusually high ton-mile rate. It is further to be observed that con-

ditions are not similar on the two lines. The Durham line has much lighter traffic and its earnings are seemingly a great deal less than the earnings on the Winston-Salem line. Durham is about 50 miles farther from Pocahontas than Winston-Salem. We are therefore of the opinion that defendant is entitled to charge a somewhat higher rate to Durham than to Winston-Salem.

Under all the circumstances shown we are of the opinion, and therefore find, that a rate on coal from the Pocahontas district to Winston-Salem which exceeds \$2.10 per ton, and a rate on coal from the same district to Durham which exceeds \$2.20 per ton, is unreasonable and violative of section 1 of the act. It is to be remembered that the rates to the points in question on domestic coal have been reduced by the voluntary action of the carrier 10 cents per ton. Since the hearing and submission of this case a new railroad has been constructed in Carolina territory and a general readjustment of coal rates is taking place. Until the effect of this new element of competition on the existing relation of rates in the general territory is known we are of opinion that any greater reductions are not warranted to the points in question than above indicated.

The question of reparation has been considered and we are of opinion that under all the facts and circumstances in this case reparation should not be granted.

An order will be entered accordingly.

16 I. C. C. Rep.

No. 1421.

AVERY MANUFACTURING COMPANY ET AL.

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted February 13, 1909. Decided April 12, 1909.

Complainants allege that defendants, by taking Galva, Canton, and Springfield, Ill., out of the Peoria rate group and placing them in the Mississippi River rate group on shipments of agricultural implements to Missouri River points, have unduly discriminated against Peoria and manufacturers and shippers of such products at that point; *Held*, That under the facts and circumstances shown the lower rates on agricultural implements granted Canton, Galva, and Springfield do not unduly prejudice Peoria, and are therefore not unlawful.

Francis H. Tichenor for complainants.

Hale Holden and *G. H. Crosby* for Chicago, Burlington & Quincy Railroad Company.

F. H. Manter for Atchison, Topeka & Santa Fe Railway Company.

E. B. Peirce and *T. H. Simmons* for Chicago, Rock Island & Pacific Railway Company.

Donald Defrees and *F. S. Hollands* for Chicago & Alton Railroad Company.

N. S. Brown and *James L. Minnis* for Wabash Railroad Company.

William Ellis and *H. E. Pierpont* for Chicago, Milwaukee & St. Paul Railway Company.

W. E. Keepers and *W. S. Horton* for Illinois Central Railroad Company.

W. S. Horton for Toledo, Peoria & Western Railway Company.

W. M. Caves for Parlin & Orendorff Company, intervener.

J. T. Morrison for Racine & Settley Company, intervener.

C. A. Bannister for Moline Plow Company, intervener.

REPORT OF THE COMMISSION.

CLEMENTS, Commissioner:

This case involves the relative adjustment of freight rates on agricultural implements from Peoria, Galva, Canton, and Springfield, Ill., to Missouri River points and beyond. Complainants are

manufacturers and shippers of and dealers in agricultural implements in the city of Peoria or adjacent thereto. Manufacturers of similar commodities located at Galva, Canton, and Springfield intervene, and evidence was introduced by them at the hearing.

Peoria is 150 miles southwest of Chicago, and has a population of about 65,000. It is reached by the Chicago, Burlington & Quincy; Chicago & Alton; Chicago, Peoria & St. Louis; Chicago, Rock Island & Pacific; Cleveland, Cincinnati, Chicago & St. Louis; Illinois Central; Iowa Central; Lake Erie & Western; Chicago & Northwestern; Peoria & Pekin Union; Peoria Railway Terminal Company; Toledo, Peoria & Western, and Vandalia railroads. Galva has a population of about 3,500, and is 45 miles northwest of Peoria, at a junction of the Chicago, Burlington & Quincy and Chicago, Rock Island & Pacific railways. Canton is a point on the Chicago, Burlington & Quincy and Toledo, Peoria & Western railways, 28 miles west of Peoria, and has a population of about 6,000. Springfield is 88 miles south of Peoria and has a population of about 40,000. It is reached by the Baltimore & Ohio Southwestern; Chicago & Alton; Chicago, Peoria & St. Louis; Cincinnati, Hamilton & Dayton; Illinois Central, and Wabash railroads.

Peoria is the basing point for what is known as the Peoria rate group. The Peoria group was first formed as the result of the adjustment of rates to western territory in relation to adjustment from the east. For example, the first class rate from Chicago to the Missouri River is 80 cents; the rate from the Mississippi River to the Missouri River is 60 cents, and the rate from Peoria is 70 cents. The Peoria rate is 10 cents less than the Chicago-Missouri River rate and 10 cents more than the Mississippi-Missouri River rate. The percentage of rates from all eastern points to the Mississippi River is about 17 per cent above Chicago rates. The rate from the east to Peoria is 110 per cent of the Chicago rate. For many years shipments to Canton and Galva from the east took 122 per cent of the Chicago rate. Springfield was given the East St. Louis rate, first of 116 per cent, afterwards increased to 117 per cent. Since 1890 Canton and Galva have taken 117 per cent of the New York-Chicago rates on shipments from the east.

Prior to 1890 rates from the points in question on all classes to Missouri River points were the same, all taking the Peoria rate. They take the same rates now on all classes. On shipments of agricultural implements Galva, Canton, and Springfield now take the Mississippi River rate, which is $3\frac{1}{2}$ cents per 100 pounds less than the Peoria rate. In 1890 Galva was given the Mississippi River rate on shipments of corn planters only to Missouri River points. This rate appears to have been first established by the Chicago, Rock Island & Pacific on representations of a Galva manufacturer that he was unable

to compete with a manufacturer of corn planters located at Galesburg, Ill., situated on the line of the Chicago, Burlington & Quincy about 30 miles west of Galva. Galesburg enjoys the Mississippi River rate on shipments to the west. In 1893 Galva was given the Mississippi River rate on shipments to Missouri River points on all agricultural implements. About the same time Canton, under similar circumstances, was accorded the same rates. In 1903 Springfield was placed on the same basis in respect of agricultural implement shipments.

Short-line distances in miles to important Missouri River points are as follows:

From—	To Omaha.	To St. Joseph.	To Kansas City.
	<i>Miles.</i>	<i>Miles.</i>	<i>Miles.</i>
Galva.....	357	329	348
Canton.....	373	327	347
Peoria.....	386	358	378
Springfield.....	429	308	298

On through shipments the differences in distance are not important in considering rates except possibly the distance from Springfield to Kansas City. The average distance from the different points to points on the Missouri River is so nearly equal, however, that for rate-making purposes the difference may be ignored.

It is alleged in the complaint, in substance and effect, that by placing Galva, Canton, and Springfield on the Mississippi River basis on shipments of agricultural implements to Missouri River the defendants unduly discriminate against Peoria. Reparation is asked on shipments made within the period of limitation.

It is the contention of complainants that the agricultural implement manufacturers of Galva and Canton were established when the rates on their products to the Missouri River were the same as from Peoria; that the railroads grouped Galva, Canton, and Springfield with Peoria for rate-making purposes on shipments of all classes to the Missouri River; and that there has been shown no change of conditions or circumstances since the business was established at the points in question which justify lower rates on agricultural implements than from Peoria to the same destination points. It is insisted that Peoria, by reason of its importance as a railroad, manufacturing, and shipping center, is entitled to lower rates than from points of lesser importance where the same conditions do not exist. It is pointed out that planters began to be manufactured in Galva about 1881 and that agricultural implements have been produced in Canton for nearly fifty years. It does not appear just how long agricultural implements have been manufactured in Springfield, but it is shown that industries of that kind have existed since before 1890. Complainants show that they were not aware that the points in question

had lower rates on shipments to the Missouri River than Peoria until 1906, and as soon as they discovered the alleged discrimination they began to protest to the carriers. The protests did not bring about an increase in the rates to the other points or a reduction in the Peoria rates, and the complaint was thereupon filed.

Defendants assert that the establishment of the Peoria group territory was for the purpose of equalizing rates as nearly as practicable between the different gateways from the east to the west. Before the Peoria group was established and before Peoria was made a basing point, a basis of rates had been made from the east to all Mississippi River crossings. Some of the roads from the east reach some of the basing points, but do not reach others. A particular road may reach but one basing point from the east or the west. Routes and basing points were established so that all roads might share in the business and all shippers be given so near as could be done opportunity to compete in common markets on an equal footing. In this general adjustment extending for a long distance north and south along the Mississippi River and to interior points in the same territory, no particular industry was taken into consideration. When the attention of certain carriers was called to inequalities in the adjustment which appeared to be unfair to particular industries on their lines, rates were made which removed the inequality if it could be done without disturbing the general adjustment under which business in many competing communities had been established and maintained.

Manufacturers at Galva and Canton have shipped agricultural implements on the Mississippi River rate basis for about sixteen years. These points make no shipments of other commodities to Missouri River points. Springfield probably makes some shipments west other than agricultural implements, but there is nothing in the record to show that such shipments are of importance. The attention of the carriers was called to the fact by manufacturers at Springfield that in order to compete with shippers from the other points that point should have Mississippi River rates out, inasmuch as it is on the Mississippi River basis on inbound shipments, and the change in rates was made accordingly.

Galva, Canton, and Springfield pay higher rates on inbound commodities which are consumed in the manufacture of agricultural implements than Peoria. For example, the rate on steel and iron is 2 cents per 100 pounds more to these points than to Peoria and the rate on lumber averages about 1 cent per 100 pounds more, with other commodities in the same proportion. Complainants insist that the question of rates inbound is not properly to be considered in the adjustment of rates between the points involved, and that Peoria is entitled to the benefit of its location and importance without regard to the effect upon shippers from other points not similarly situated.

It is to be remembered that carriers are the common servants of all shippers and are bound to serve them all reasonably and without undue prejudice. A carrier is to take into account in making rates, amongst others, questions of distance and occasionally natural advantages. A carrier ought not and should not be required to equalize access to markets for all engaged in a common business if the shippers are differently situated and are not entitled to the same rates. It may be perfectly lawful, however, and be amply supported by just public considerations, for a carrier to give equal access to markets to localities of dissimilar distances where such distances involve no material increase in the transportation expense. No locality, manufacturer, or shipper has an exclusive right to supply a market.

In the interest of the shipping and consuming public a carrier has the undoubted right to consider within proper limitations the conditions under which industries on its lines in the same general territory with other industries are compelled to conduct their business. One of these conditions may be a handicap of higher rates on raw material. Groups in rate making are made largely with respect of business as distinguished from transportation conditions. In other words, grouping is done with a reasonable disregard of distance and with close attention to commercial conditions. Business conditions with respect of the manufacture and sale of agricultural implements existing at Canton, Galva, and Springfield were such as to impel certain carriers to take these commodities out of the group. This was followed by other carriers serving the same points. So far as appears, transportation conditions are substantially similar with respect of all the points involved. The difference in business conditions was due to the fact that rates to Peoria from the east and southeast are lower than the rates to the other points; that is, the eastern lines make lower rates to Peoria on raw material. The increased use of steel and iron in the manufacture of agricultural implements, upon which Peoria has more favorable rates than upon lumber, has emphasized the disadvantage under which the other points are doing business.

The evidence shows that on practically three-fourths of agricultural implements shipped from Peoria, that point has an advantage under existing rates over Canton and Galva. The figures are not given in comparison with shipments from Springfield, but it is shown that Peoria has a material advantage over that point on the larger part of its product. There is no evidence that Peoria manufacturers of and dealers in agricultural implements have suffered in competition with shipments from the other points in controversy. So far as appears, the Peoria industries are thriving and have enjoyed continuous and rapidly increasing business. On shipments of agricultural implements to all points east of the Illinois-Indiana line Peoria has 30 to 40 cents a ton advantage in rates over Springfield, Canton, and Galva.

To points northwest rates from all the points are the same. This is also true of Texas common points and Pacific coast points. Of shipments from Peoria, about 20 per cent go east and for export; 50 per cent to the west and northwest, and but 30 per cent to Missouri River points.

It is insisted by complainants that on shipments from Springfield rates are made by a route passing through Peoria to Missouri River territory. The Missouri River rate from Springfield was first put in by the Wabash, which has the short line to Kansas City and certain other points, and this rate was met by Peoria lines in order to secure a share of the business. Under these circumstances the fact that traffic may move at a lower rate from Springfield via Peoria than from the latter point is not conclusive that the rates are excessive or unduly discriminatory against Peoria.

Taking into account all the facts and circumstances in this case, we are of opinion that the lower rates from Galva, Canton, and Springfield on agricultural implements to Missouri River points do not unduly prejudice Peoria and are not therefore unlawful. It follows that the complaint must be dismissed.

16 I. C. C. Rep.

No. 2152.

E. A. NEUFELD

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.

Submitted February 15, 1909. Decided April 13, 1909.

Rate of 22½ cents per 100 pounds on laths, in carloads, from Beecher Lake, Wis., to Chicago, Ill., found unreasonable to the extent that it exceeded 10 cents per 100 pounds, rate applicable from Pembine, Wis., a farther-distant point, to Chicago, Ill. Reparation awarded.

E. A. Neufeld for complainant in person.

Wm. Ellis for defendant.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

Complainant, a wholesale dealer in lumber, laths, shingles, etc., located at Green Bay, Wis., on April 10, 1908, shipped from Beecher Lake, Wis., to Chicago, Ill., via the line of the defendant, a common carrier subject to the act to regulate commerce, 1 carload of laths weighing 28,400 pounds, on which a rate of 22.5 cents per 100 pounds was charged, aggregating \$63.90. Beecher Lake is located on the Superior division of the defendant 273 miles from Chicago. Pembine, Wis., is on the same division, 4 miles farther distant from Chicago.

On the date this shipment moved the rate on lumber from Pembine to Chicago was 10 cents per 100 pounds as per defendant's tariff, I. C. C. No. A-9708, effective November 16, 1906. This tariff, however, contained no provision making a rate from Pembine applicable at intermediate points between Pembine and Chicago, and accordingly the defendant applied its distance tariff, I. C. C. No. B-137, effective May 31, 1907, for the distance Beecher Lake to Chicago. It is alleged by complainant that a rate in excess of 10 cents per 100 pounds on the shipment in controversy is violative of the provisions of the act to regulate commerce, and reparation in the sum of \$35.50, based on the difference between the charges which would have been

exacted had the rate from Pembine applied at intermediate points and the aggregate charges which were paid.

The defendant answering admits the unreasonableness of the 22.5-cent rate as applied to the shipment, and prays the issuance of an order permitting it to pay the reparation claimed.

By stipulation entered into between the parties, it was agreed that the case be submitted on the pleadings without hearing, the filing of briefs and presentation of argument being waived.

Effective August 13, 1908, defendant's tariff, I. C. C. No. A-9708, was amended to provide that the rate on lumber, carloads, from Pembine, Wis., to Chicago, Ill., of 10 cents per 100 pounds is applicable from Beecher Lake, Wis.

On the pleadings, the Commission finds that, in view of Beecher Lake being intermediate between Pembine, Wis., and Chicago, Ill., and no circumstances and conditions having been shown to exist at Pembine justifying a lower rate from that point to Chicago than from Beecher Lake to the same destination, the rate of 22.5 cents per 100 pounds applied to this shipment was unjust and unreasonable and in violation of section 4 of the act to regulate commerce, to the extent that it exceeded the subsequently established rate of 10 cents per 100 pounds; and that the complainant is entitled to reparation measured by the difference between the charges at the rate of 22.5 cents per 100 pounds, charged, and the rate of 10 cents per 100 pounds, herein found to be reasonable, or \$35.50, with interest. We also find that for the future it would be unreasonable for this defendant to maintain from Beecher Lake, Wis., to Chicago, Ill., a rate on lath in excess of its current rate on the same commodity from Pembine, Wis., to Chicago.

An order will be entered accordingly.

16 I. C. C. Rep.

No. 1901.

W. A. TULLY GRAIN COMPANY

v.

FORT SMITH & WESTERN RAILROAD COMPANY ET AL.

Submitted March 22, 1909. Decided April 12, 1909.

Defendants voluntarily reduced their rate on snapped corn from Okemah, Okla., to Terrell, Tex., because it was unjust and unreasonable. Within the period of the statute of limitation, but fifteen months after rate was reduced, complaint was filed asking reparation on shipment moving under the higher rate. Defendants were never asked to make informal adjustment, and when formal complaint was filed, were willing to satisfy same without formal hearing; *Held*, That complainant is entitled to reparation for the difference between the reduced rate and the rate charged as applied to the weight of the shipment, but under the peculiar facts, the reduced rate should be maintained for a period of not less than two years from the date it became effective.

W. A. Tully for complainant.

C. E. Warner for Fort Smith & Western Railroad Company.

James Hagerman and *Joseph M. Bryson* for Missouri, Kansas & Texas Railway Company and Missouri, Kansas & Texas Railway Company of Texas.

F. B. McKay for Texas Midland Railroad Company.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

This case is submitted to the Commission for hearing and determination upon the complaint and the joint answer of defendants, which set forth the following facts:

Complainant is engaged in the grain business at Coweta, Okla. On February 6, 1907, it shipped 1 carload of snapped corn, weighing 39,940 pounds, from Okemah, Okla., to Terrell, Tex., via the lines of the defendants. The rate on shelled corn between said points at that time was 23½ cents per 100 pounds in carloads, and the snapped-corn rate was 125 per cent thereof, as shown by supplement No. 15, effective February 1, 1907, to G. W. Cale's Tariff 39-B, M., K. & T. 3470, I. C. C. No. 476. Under this tariff charges should have been

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collected at the rate of 29.38 cents per 100 pounds, or a total of \$114.41, as applied to the actual weight of the shipment. However, only \$113.98 was collected. By supplement No. 7 to G. W. Cale's Tariff 39-C, M., K. & T. 3470, I. C. C. 487, effective August 19, 1907, defendants voluntarily canceled the higher rate on snapped corn and made the shelled-corn rate apply to snapped corn between point of origin and destination covered by the complaint.

The defendants admit that the rate on snapped corn between the points involved, carried in said tariff, I. C. C. 476, was unjust and unreasonable to the extent that it exceeded the shelled-corn rate, which was afterwards made applicable to snapped corn by said supplement No. 7 above referred to, and is still in effect. The defendants also ask that reparation be awarded complainant for the difference in the rate provided in said supplement No. 7 and the amount actually collected. At the shelled-corn rate the charges would have amounted to \$91.51; the amount actually collected was \$113.98.

Upon the foregoing facts we find that the rate applied to and collected by defendants on shipments of snapped corn from Okemah, Okla., to Terrell, Tex., was, at the time of the movement of the shipment in question, and at all times since has been, unjust and unreasonable to the extent that it exceeded the shelled-corn rate of 23½ cents per 100 pounds between those points; and we further find that complainant is entitled to reparation from the defendants in the sum of \$22.47.

The reduced rate, which forms the basis of award of the reparation, became effective August 19, 1907, and has ever since remained in force. The presumption is that it is the reasonable rate to-day. The complaint was filed November 24, 1908. From this it will be seen that the rate was voluntarily reduced more than fifteen months prior to the filing of the complaint. The claim involved in this case was never presented to the defendants for informal adjustment, and as soon as the formal complaint was filed the defendants were not only willing to adjust the claim, but to submit the case for determination without the necessity of a formal hearing. When the reduced rate has remained in force for a period of two years it will have more than covered the two years' period within which any shipper paying the higher rate could make claim for reparation. In view of these facts, we think that defendants should be ordered to maintain the reduced rate for a period of not less than two years from August 19, 1907.

An order will be entered in accordance with these views.

No. 1826.

STONE-ORDEAN-WELLS COMPANY

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY ET AL.

Submitted February 5, 1909. Decided April 13, 1909.

Rate of \$1.40 per 100 pounds on rice in carloads from New Orleans, La., to Billings, Mont., found unreasonable to the extent that it exceeded \$1.07 per 100 pounds. Reparation awarded.

Alexander Marshall for complainant.

Ed. Baxter and *R. Walton Moore* for Mobile & Ohio Railroad Company and New Orleans & Northeastern Railroad Company.

Hale Holden for Chicago, Burlington & Quincy Railroad Company.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

Complainant corporation is engaged in the wholesale grocery business at Duluth, Minn. On November 30, 1906, it made shipment of a carload of rice weighing 38,300 pounds, over the lines of the defendants from New Orleans, La., to Billings, Mont., upon which freight charges were collected in the sum of \$537.30, based upon a rate of \$1.40 per 100 pounds. Complainant alleges that that rate is unjust and unreasonable and that it should not have exceeded \$1.07 per 100 pounds. It asks reparation for \$127.49, the difference between the amount collected and what would have been charged if a rate of \$1.07 per 100 pounds had been applied.

The defendant, the Chicago, Burlington & Quincy Railroad Company, in its answer averred that, effective December 22, 1908, one month and twenty days after the complaint was filed, all defendants concurred in publishing a rate of \$1.07 per 100 pounds, as prayed for by the complainant, but it denied that the rate of \$1.40 per 100 pounds, under which the shipment moved, was unreasonable at that time. This denial made a hearing necessary.

At the hearing, of which all defendants had been duly notified, it was stipulated between the representative of the complainant and the representative of the Chicago, Burlington & Quincy Railroad Company, the only defendant appearing, that the rate of \$1.07 per 100 pounds would have been a reasonable rate at the time the shipment moved. These parties expressed the desire that the complaint be considered as informal in character, so that under the rules of the Commission relating to informal awards of reparation, the order establishing the rate for the future might be limited to a period of one year. Formal complaint was made necessary and formal hearing was required in this case by the attitude and action of defendants, and in accordance with the usual practice the defendants should maintain the rate prescribed as reasonable for a period of not less than two years.

Upon the record we find that the rate of \$1.40 per 100 pounds, as applied to shipments of rice in carloads from New Orleans, La., to Billings, Mont., was excessive and unreasonable at the time this shipment moved and should not have exceeded \$1.07 per 100 pounds, which we also find to be a just and reasonable rate to apply in the future to such transportation. We further find that there is now due and owing the complainant as reparation the sum of \$127.49 with interest. This award includes an overcharge of \$1.10, which arose from an error in extension, the complainant having paid \$537.30, although the amount which should have been collected under the rate of \$1.40 per 100 pounds was \$536.20.

An order will be entered in accordance with these findings.

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No. 1361.

CHARLES A. SANFORD

v.

WESTERN EXPRESS COMPANY.

No. 1362.

SAME

v.

WELLS FARGO & COMPANY ET AL.

Submitted February 5, 1909. Decided April 13, 1909.

1. Complaint in case No. 1361 alleges unreasonable express charges on small packages shipped from St. Paul, Minn., to Courtenay, N. Dak.; *Held*, That case is governed by *Kindel v. Adams Express Co. et al.*, 13 I. C. C. Rep., 475, in which it was held that the rates on small packages were made in competition with the United States mail rates.
2. Complaint in case No. 1362 alleges unreasonable rates on small packages shipped from New York, N. Y., to Courtenay, N. Dak.; *Held*, That the rates are not shown to be excessive. Complaints dismissed.
3. Where rates generally are attacked all parties should have an opportunity to be put on notice of the charges which must be met. In these complaints specific rates were attacked and beyond a decision in those respects the Commission can not legitimately go. In the general adjustment of rates individual instances of seeming discrepancy are noticed which are inexplicable from a cursory examination, but often when such instances are made the subject of specific complaint, circumstances and conditions before unknown are brought out tending to justify the apparently unreasonable relation. The Commission consequently moves with great caution in condemning a rate or practice and does so only when the facts before it amply warrant such action.

Charles A. Sanford for complainant in person.

Lee Combs for Western Express Company.

Charles W. Stockton for Wells Fargo & Company.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

These cases were consolidated at the hearing, and will be considered in one report.

Complainant resides and is engaged in business at Courtenay, N. Dak., and in the conduct of his business ships property from

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various points in the United States, particularly St. Paul, Minn., and New York, N. Y., to Courtenay. Defendants are common carriers, amenable to the act to regulate commerce.

Complaint in case No. 1361 is that defendant's charge of 50 cents for the transportation of a package of dry goods or other merchandise weighing from 3 to 4 pounds from St. Paul to Courtenay is unjust, excessive, and unreasonable.

In case No. 1362 it is alleged that the defendants charge \$1.90 for the transportation of a package of medicine or other merchandise weighing 10 to 15 pounds from New York to Courtenay. There is no joint through rate, and combination of \$1.15 charged by defendant, Wells Fargo & Company, for the transportation from New York to St. Paul, plus 75 cents charged by defendant, the Western Express Company, from St. Paul to Courtenay, makes the through rate, which is alleged to be unjust, excessive, and unreasonable, and a reasonable maximum joint rate is prayed for.

Defendants, answering, deny the allegations of petitioner.

Complainant neither called any witnesses, nor submitted any proof to substantiate the allegations in his complaints, but, while not qualifying as an expert on express-rate making, testified in his own behalf, detailing and directing attention to various comparisons of rates, distances, and commodities in the territory in which defendants operate, and in other portions of the United States, with the rates here complained of.

While the petition in case No. 1361 assails the reasonableness of the charge of 50 cents on a package of dry goods or other merchandise weighing from 3 to 4 pounds from St. Paul to Courtenay, it was disclosed at the hearing that the gravamen of complaint is the disproportionately higher rates charged on packages weighing more than 7 pounds as compared with those weighing less. Complainant recognized the competition of the United States Government rates on mail with packages weighing up to and including 4 pounds, but believed that if such rates were reasonable, higher rates relatively on packages weighing more than 7 pounds were unjust and unreasonable. Briefly, therefore, the record shows an opinion on the part of complainant that the express rates attacked are unjust and unreasonable in and of themselves and that, comparatively from the view point of distance and rates charged on other commodities, the rates are unjustly discriminatory, and that the rates for heavier packages are not relatively proportioned on the basis of rates for light packages.

It appears that the rate from St. Paul to Courtenay is \$2 per 100 pounds; that a pound of merchandise between those points can be shipped for 25 cents collect, 16 cents prepaid. This rate—1 cent per ounce—includes merchandise and samples thereof, etc., value not exceeding \$10, and is applicable unless the graduated charge is less.

Under section D of the Official Express Classification, almanacs, blanks, blotters, printed matter, samples of grain, etc., are charged 1 cent for each 2 ounces or fraction thereof, minimum charge 10 cents.

The rate from New York to Courtenay is made on graduate on rate from New York to St. Paul and graduate on rate from the latter point to Courtenay, because defendant, Wells Fargo & Company transports the shipment over its line from New York to St. Paul, and defendant, Western Express, transports it from St. Paul to Courtenay, and those companies each have a separate graduate on shipments. The United States mail competitive principle on sections D and E matter is extended to packages of 7 pounds. The charge on a shipment of 15 pounds from New York to Valley City, N. Dak., a competitive point, is \$1.50. By using three companies complainant could ship from New York to Courtenay via Valley City at a rate of \$1.80, if reshipment is made by him at Valley City, otherwise an additional transfer charge must be paid at that point.

It is alleged that the usual basis of express rates is two and one-half times the first class freight rate per 100 pounds. Applying this to the first class freight rate from Minneapolis to Courtenay, 77 cents per 100 pounds, would make \$1.925, as against the present rate of \$2.

The graduate begins at a minimum of 25 cents for a 1-pound package and the rate per pound decreases with some uniformity as the weight increases after passing 7 pounds. Packages of over 50 pounds are taken at pound rates. The scale reads: Packages not over 1 pound; over 1 pound and not over 2 pounds; over 3 pounds and not over 4 pounds; 5 to 7; 7 to 10; 10 to 15; 15 to 20, etc. Therefore the charge for 10 pounds and an ounce would be greater than for 10 pounds. The merchandise rate from New York to Courtenay is \$6.50 per 100 pounds, and packages over 10 pounds and not over 15 pounds would be charged \$1.90, inasmuch as the reshipment moves over two lines and the per 100 pound rates of \$4.50 from New York to St. Paul, and \$2 from St. Paul to Courtenay, graduated twice, are used. One of the witnesses testified that the authority for the double graduation is found in Rule 6 of Official Express Classification No. 18, I. C. C. No. 1, as follows:

Shipments exceeding 7 pounds carried by more than one company, charge separately for each company, except that between points where a single graduate is authorized the charge will be the same as if carried through by one company.

We are of the opinion that case No. 1361 is ruled and governed by the holding of the Commission in *Kindel v. Adams Express Co. et al.*, 13 I. C. C. Rep., 475, in which it was said:

The defendants stated that these rates on small packages were made in competition with the United States mail, and that since distance was disregarded in

postage rates they were obliged to practically disregard distance in establishing their own charges for the handling of business in competition with the post-office. The mail is only available up to 4 pounds in weight, but the defendants, as a matter of policy, extend their competitive rates to packages of 7 pounds.

Since these rates upon small packages are made under these competitive conditions they ought not to be taken as the test of a reasonable rate upon larger packages to which the competition does not apply, just as this Commission has often said, following the holdings of the Supreme Court of the United States, that a freight rate forced by competition can not be made the measure of a reasonable rate where the competition does not apply. It is possible that circumstances might arise in which the application of these charges between competitors might work a discrimination which would be undue, notwithstanding the competitive situation, but nothing of that kind is suggested in the record before us.

An examination of the tariffs discloses that a single graduate is not authorized from New York to Courtenay. It therefore appears that the double graduation by which the through rate of \$1.90, complained of in case No. 1362, is charged is in accordance with classification and tariff rules.

In *Kindel v. Adams Express Company, supra*, the principle was announced that since the connection between the value of the service and the cost of the property employed in rendering it is so slight, little reference can be had to it in determining the reasonableness of express rates; that the same is true of capitalization and that to decide the question, inquiry must be had into the character of the business, the amount of capital required for its conduct, the hazard involved, and, especially, the profits the companies were making under the rates attacked. In the instant case no inquiry was had as to the character of the business, but, speaking generally, it was alleged the rate was unreasonable in and of itself and in comparison with rates on other commodities, the conditions surrounding the shipment of which were not disclosed. As was stated in the *Kindel case*, a comparison of the rates at which express companies do business in other localities is more important in the determination of the reasonableness of their rates than it would be in the determination of the reasonableness of freight charges, because of the manner in which express business is conducted. The one fact of record here which is important in this connection is the rate to Valley City, N. Dak. Both Valley City and Courtenay are located on the Minnesota Division of the Minneapolis, St. Paul & Sault Ste. Marie Railway, the former 297 miles from St. Paul and the latter 331. So far as express business is concerned, Valley City is a competitive point; Courtenay an exclusive office. A single graduate of \$6.25 per 100 pounds is in effect to Valley City from New York, but the graduate on that rate for packages over 10 pounds and not over 15 is \$1.50. As has been previously shown, the charge from Valley City to Courtenay is 30

cents. From the record in this case, we are unable to find that the rate complained of is unjust or unreasonable.

The Commission does not feel that it can assume to pass generally upon all the rates to which reference was made by complainant. In administering the law, and in its endeavor to effectuate justice to all concerned, the Commission must be observant of the weight to be given evidence adduced before it. It supplements the records by using official information before it in reaching conclusions as to the reasonableness of rates and in determining questions presented to it for decision. Where rates generally are attacked all parties should have an opportunity to be put on notice of the charges which must be met. In these complaints specific rates were attacked, and beyond a decision in those respects we can not legitimately go. In the general adjustment of rates individual instances of seeming discrepancy are noticed, which are inexplicable from a cursory examination, but often, when such instances are made the subject of specific complaint, circumstances and conditions before unknown are brought out tending to justify the apparently unreasonable relation. The Commission consequently moves with great caution in condemning a rate or practice, and does so only when the facts before it amply warrant such action.

It follows that the complaints must be dismissed, and such an order will be issued.

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No. 1972.
PYRO ART CLUB
v.
UNITED STATES EXPRESS COMPANY.

Submitted March 19, 1909. Decided April 12, 1909.

Complainant asked that defendant be required to extend its free-delivery service in the city of Chicago to include complainant's place of business. At the hearing it appeared that the extension of such free service now includes complainant's place of business. Upon application to that effect, complaint is dismissed.

Joseph T. Tyssowski for complainant.

Thomas E. McDonnell for defendant.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

Complainant is a copartnership engaged in a mail-order business at 870 West Diversey avenue, Chicago, Ill. During the month of December, 1906, complainant purchased a lot of select fruit of a dealer at Benton Harbor, Mich. The commodities were forwarded by the defendant, which refused to make delivery to complainant's place of business except on payment of additional charges, for the stated reason that that point was beyond the free-delivery limit prescribed by the defendant in the city of Chicago. It is contended in the complaint that failure to make free delivery to complainant is unjust and discriminatory inasmuch as express deliveries are made to other points in the city of Chicago located greater distances from the main office of defendant. An order was asked that defendant be required to extend its free-delivery service in the city of Chicago to include complainant's place of business.

At the hearing the parties submitted a stipulation asking that the proceeding be dismissed. It appears from the stipulation and statements made by the parties that the defendant has inaugurated free express-delivery service to include that section of Chicago in which the premises of complainant are located, and it was agreed between the parties and is of record that the extension of such free service is to be permanent as long as present conditions prevail.

Inasmuch as the complainant is satisfied and asks that the complaint be dismissed, an order will be entered accordingly.

No. 1921.

DULUTH LOG COMPANY

v.

CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY
COMPANY ET AL.

No. 1962.

SAME

v.

MINNESOTA & INTERNATIONAL RAILWAY COMPANY
ET AL.

Submitted February 5, 1909. Decided April 6, 1909.

Complainant claims reparation in these two cases for the higher charge collected on shipments of poles from Washburn, Wis., to Winside, Nebr., and from Northome, Minn., to James, Iowa, because the actual weight at destination was greater than that named in the bill of lading. The record shows that the weight upon which the rates were finally assessed was the correct weight, and the complaints as to this matter should be dismissed; but order issued for an admitted overcharge on the Northome shipment.

Albert Baldwin for complainant.

Richard L. Kennedy for Chicago, St. Paul, Minneapolis & Omaha Railway Company, and Chicago & Northwestern Railway Company.

Charles A. Hart for Minnesota & International Railway Company, and Northern Pacific Railway Company.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

In April, 1908, the complainant made shipment of 1 carload of poles from Washburn, Wis., to Winside, Nebr. The car was weighed at the point of origin and the net weight stated in the bill of lading as 36,700 pounds. Charges were finally assessed upon 39,420 pounds and the complainant claims reparation for the difference between the amount actually paid and the amount which would have been paid upon the weight as stated in the bill of lading.

The tariff provides that the rate shall be assessed upon the actual weight, and the bill of lading is conditioned that the weight stated is subject to correction. The actual weight of this shipment should therefore govern. When the car is weighed at the point of origin and the weight stated in the bill of lading the shipper has a right to rely upon that weight and the carrier should only be allowed to change the weight upon satisfactory proof of the correctness of the substituted weight. In this case the testimony fully shows the manner in which this car was reweighed, and from that testimony we are satisfied that the weight upon which the rate was finally assessed was the correct weight. The complaint should therefore be dismissed.

The above statement applies to No. 1921. The facts presented in No. 1962 are, so far as concerns the weighing of the shipment, in all essential particulars similar. The weight ascertained at the initial point and specified in the bill of lading was 29,400 pounds. The corrected weight was 31,220 pounds. We find that this last-named weight was the actual weight of the shipment, and charges should be assessed accordingly.

This shipment was billed from Northome, Minn., to James, Iowa, and charges assessed at the rate of 24 cents per 100 pounds. The correct rate then in effect between these points was 23 cents per 100 pounds. One of the defendants admits an overcharge of 1 cent per 100 pounds; the other two assert in their answers that the shipment originated, not at Northome, but at a somewhat more distant point. No evidence was adduced upon the hearing to prove this, and in the absence of such testimony we must accept the statement contained in the bill of lading issued by the defendants. The complainant has therefore been overcharged by the amount of \$3.12, for the repayment of which an order should issue.

No. 1894.
MACGILLIS & GIBBS COMPANY
v.
CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY
ET AL.

Submitted February 10, 1909. Decided April 6, 1909.

Defendants' rate on cedar poles from Chicago, Ill., to Brady, Tex., assessed on complainant's shipment, should not have exceeded their rate on lumber. Reparation awarded.

Kanneberg & Cochems for complainant.
E. B. Peirce for defendants.

REPORT OF THE COMMISSION.

PROUTY, *Commissioner*:

The complainant, a corporation doing business at Milwaukee, in the state of Wisconsin, made shipment on May 19, 1907, of 1 carload of cedar poles weighing 35,400 pounds, from Gladstone, Mich., to Brady, Tex. A rate of 10 cents per 100 pounds was assessed from Gladstone to Chicago, against which no complaint is made. From Chicago the shipment moved over the lines of the above-named defendants, and a rate of 52 cents was assessed and collected by them. At the same time there was in effect over these lines from Chicago to Brady a rate upon lumber of 38 cents. The complainant insists that the rate on poles should not have exceeded the lumber rate, and asks reparation by the difference between the two.

Upon general principles it would seem that the rate upon poles and logs ought not to exceed that upon manufactured lumber. This Commission has several times held that the rate on cross-ties ought not to exceed that upon lumber. These defendants have since the filing of this complaint established the same rate upon poles as upon lumber, but have advanced the rate upon lumber to 41 cents.

We find that at the time of shipment the rate on poles ought not to have exceeded the rate on lumber, and that the defendants ought not, therefore, to have charged the complainant more than 38 cents. The complainant has been compelled to pay excessive charges by the amount of the difference between the rate assessed, 52 cents per 100 pounds, and the rate which should have been assessed, 38 cents per 100 pounds, amounting to \$49.56, which the defendants should repay with interest.

The reasonableness of the present lumber rate, 41 cents, is not put in issue by the complaint and is not considered by us. An order will be issued requiring the defendants to maintain for the future a rate upon poles not exceeding that upon lumber.

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No. 1652.

JOHN N. VOORHEES

v.

ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

Submitted February 1, 1909. Decided April 12, 1909.

Complainant shipped 6 carloads of cabbages from St. Andrews, S. C., to New York, N. Y., for the transportation of which defendants charged their less than carload rate, because the initial carrier performed the loading service; *Held*, That these shipments having been offered in carload quantities were entitled to the published carload rate, and in the absence of specific tariff provision no additional charge could be lawfully collected from complainant to cover loading service performed by the railroad company. Reparation awarded.

George F. Von Kolnitz for complainant.

R. Walton Moore for Atlantic Coast Line Railroad Company and Richmond, Fredericksburg and Potomac Railroad Company.

REPORT OF THE COMMISSION.

CLEMENTS, Commissioner:

Complainant is engaged in truck farming in St. Andrews parish, S. C., and is also interested in the conduct of a commission business in the city of New York.

On May 14, 15, and 16, 1908, respectively, complainant shipped from St. Andrews to New York 2 carloads of cabbages. Bills of lading issued by the Atlantic Coast Despatch (Atlantic Coast Line Railroad and Pennsylvania Railroad), and expense bills issued by the Pennsylvania Railroad Company covering these several shipments, are filed as an exhibit in the record of the case. Each of these shipments consisted of the minimum of 200 crates, except one of 206 crates made on May 16.

The total charges collected on these 6 shipments amounted to \$1,065.25, assessed on the basis of 63 cents per crate to cover the railroad transportation service, and 24½ cents for refrigeration. At the

time the shipments moved the published rate in effect on carload shipments of cabbages, minimum 200 crates, from St. Andrews to New York, was 60 cents per standard barrel or barrel crate and 63 cents per standard barrel or barrel crate on less than carloads, as per Atlantic Coast Line tariff, I. C. C. No. 5457. It will thus be seen that these shipments were charged for on the basis of the less than carload rate, 63 cents per crate, notwithstanding the fact that the shipper offered in each instance a sufficient number of cabbages to constitute the carload minimum of 200 crates. To this end two bills of lading were issued by the Atlantic Coast Despatch for each such shipment in order that the carload minimum should not appear on any one bill of lading, and thus cause misapprehension as to the application of the carload rate.

The defendants explained the application of the less than carload rate on these shipments as follows: At the time the trucking business was inaugurated in St. Andrews parish, this industry was comparatively insignificant; labor was scarce, and the farmers could not load the shipments in time to enable the railroad to make a proper schedule. For these reasons the Atlantic Coast Line undertook to perform the service of loading in order to encourage the industry, notwithstanding the fact that it is the almost universal custom of railroads to require that shippers shall load carload shipments. The rate on cabbage to New York and Philadelphia prior to March 24, 1907, was 63 cents per crate in any quantity. Subsequently the rate on carload shipments was reduced to 60 cents upon the understanding, as the defendants assert, that the shippers should perform the service of loading. This condition, however, was not definitely understood by all shippers, and the matter was not finally adjusted until May, 1908. In consequence, the Atlantic Coast Line continued to perform the loading service for the balance of the season of 1907. Subsequent to May, 1908, the loading service appears to have been performed by the shippers in all cases except as to the 6 shipments here involved, and on these the less than carload rate of 63 cents per crate was applied, the 3 cents per crate above the carload rate being assessed to compensate the carrier for performing this service.

As already stated, the charge for refrigeration is 24½ cents per crate in addition to the freight charge, and out of this the refrigerator-car company allows to the carrier \$1.10 per car whenever the railroad performs the loading service.

The Commission is of the opinion that these shipments having been offered in carload quantities were entitled to the published carload rate, and that in the absence of specific tariff provision no additional charge could be lawfully collected from the shipper to cover loading service performed by the railroad company. The sixth section

of the act requires that tariffs shall "state separately all terminal charges, storage charges, icing charges, and all other charges which the Commission may require, all privileges or facilities granted or allowed, and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the passenger, shipper, or consignee." The main purpose of this provision is to prevent unjust discrimination between shippers by making it possible for them to readily ascertain from the tariffs just what aggregate charges are to be assessed, and the law is specific to the effect that carriers shall not demand "a greater or less or different compensation" than the rates, fares, and charges specified in the tariff filed and in effect at the time.

The complainant is therefore entitled to recover from defendants the sum of \$36.18, with interest at the rate of 6 per cent per annum from May 19, 1908, as reparation for the charges in excess of the published tariff rate collected on the several shipments hereinbefore mentioned.

An order will be entered accordingly.

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No. 1822.

JOHN N. VOORHEES

v.

ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

Submitted March 5, 1909. Decided April 12, 1909.

1. Defendants' present rate of 48 cents on lettuce in half-barrel packages from St. Andrews, S. C., to New York, N. Y., not found unreasonable.
2. The 48-cent rate now in effect should be applied on the baskets of lettuce shipped by complainant from St. Andrews, S. C., to New York, N. Y., and which were charged at the rate of 63 cents per half-barrel crate. Reparation awarded.

George F. Von Kolnitz for complainant.

R. Walton Moore for Atlantic Coast Line Railroad Company and Richmond, Fredericksburg & Potomac Railroad Company.

REPORT OF THE COMMISSION.

CLEMENTS, Commissioner:

Complainant challenges the reasonableness of a rate of 63 cents per basket exacted by defendants on 4,385 baskets of lettuce, shipped by complainant over defendants' lines of railway from St. Andrews, S. C., to New York, N. Y., on various dates in the months of March and April, 1908. Reparation is asked in the sum of \$1,471.95, with interest, this being set out in the petition as the difference between the charges collected at the rate of 63 cents per basket and charges at the rate of 32 cents which complainant contends should have been applied. Bills of lading issued by the Atlantic Coast Despatch (Atlantic Coast Line Railroad Company and Pennsylvania Railroad Company) and expense bills issued by the Pennsylvania Railroad Company covering said shipments and showing the amount of charges collected at destination, are filed in substantiation of this claim.

The shipments of lettuce, above mentioned, were packed in baskets 30 inches in height, 16 inches across the top, and 9 inches across the bottom, each basket being estimated to contain $1\frac{1}{2}$ bushels.

Atlantic Coast Line Tariff, I. C. C. No. 5457, effective April 6, 1907, and in effect at the time these shipments moved, named a rate on
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vegetables, not otherwise specified, per package or standard crate 22 by 14 by 8 inches, of 32 cents per bushel box, basket, or crate, and provided that on shipments in packages of greater dimensions the barrel rate or double the crate rate should be applied, such rate being 63 cents per package. The rates named in this tariff applied on any quantity. However, the refrigeration charge of 15½ cents per crate contemporaneously in effect, as per Atlantic Coast Despatch Tariff, I. C. C. No. 5486, Rate Issue No. F. V. 562, was applicable on a minimum of 325 crates, and this had the effect of regulating the minimum carload in the application of the freight charges.

Complainant contends that by virtue of notation appearing on Southern Railway Eastern Vegetable Tariff No. 6, I. C. C. No. 10067 to the effect that other carriers therein named (including the Atlantic Coast Line Railroad Company), "will certify to the Interstate Commerce Commission their concurrence in the rates herein published," the rate of 32 cents therein named to apply on "vegetables, n. o. s.; beans and peas, per bushel box, basket or crate," was lawfully applicable on the shipments here involved.

It will be unnecessary to discuss or consider the effect of this so-called "negative concurrence" since we are of the opinion, irrespective of the fact as to whether or not the Atlantic Coast Line Railroad Company can be held to have actually concurred in that tariff, that this rate of 32 cents was not properly applicable to the shipments of lettuce herein referred to because the rates named in this tariff are applicable on traffic originating on the Atlantic Coast Line only when such traffic is handled in connection with the Southern Railway (Richmond and Danville Despatch or Piedmont Air Line) and the shipments here involved were handled by the Atlantic Coast Despatch and *not in connection* with or over the rails of the Southern Railway Company. Furthermore, the rate in question applied "per bushel basket," and admittedly these shipments were packed in receptacles containing 1½ bushels. The complainant in contending for the application of this rate on the shipments referred to misconstrues the wording of the tariff.

The Atlantic Coast Line on August 27, 1908, published a rate of 30 cents per basket on lettuce shipments from Charleston proper to meet the competition of the Southern Railway, which had for some time maintained that rate. Prior to this date (effective May 2, 1908) the rate from St. Andrews to New York on "vegetables, n. o. s., and beans, peas, and cucumbers in half-barrel packages, per half barrel" was reduced from 63 cents to 48 cents, and this latter rate is now in effect.

While the truck-raising industry in the vicinity of Charleston has been in process of development during the last twenty or twenty-five years, lettuce has not been extensively cultivated until within the

last four or five years. In 1905 but 13 carloads of lettuce were handled by the Atlantic Coast Line from the Charleston district, including St. Andrews; in 1906, 16 carloads; in 1907, 29 carloads; and in 1908 38 carloads of 325 crates or more, that being the minimum.

The Atlantic Coast Line Railroad Company has constructed many branch lines and invested considerable capital in sidetracks, platforms, and warehouses for the accommodation and development of this traffic. The branch line, 9 miles in length, operated through the St. Andrews parish truck-raising district, was constructed at an estimated cost of \$10,000 per mile and depends almost exclusively upon the vegetable traffic for its revenue-earning power. The great bulk of this traffic is handled in March, April, and May, and during the rest of the year these branch lines and special facilities lie practically idle.

Other special facilities are necessary for the proper transportation of vegetables, and lettuce, particularly, requires great expedition in handling to enable it to reach the markets of consumption in good condition. The best class of engines must be used to make the required schedule, averaging 18 miles per hour, including stops, and other less perishable freight is sidetracked to this end. A maximum of 35 cars can be handled in one train with proper dispatch, and lettuce loaded up to the minimum of 11,000 pounds, or $5\frac{1}{2}$ tons, per car produces a train load of $192\frac{1}{2}$ tons, or less than a third the freight-paying tonnage capacity of the engine. The average weight of a refrigerator car is 38,000 pounds; ice required to refrigerate, 12,000 pounds, and lettuce, 11,375 pounds, making the gross tonnage per car 61,375 pounds, of which $18\frac{1}{2}$ per cent is revenue producing and $81\frac{1}{2}$ per cent dead weight. The refrigerator cars must ordinarily be returned south empty, making the grand total of tonnage to be hauled in both directions as incidental to the handling of this traffic 99,375 pounds per car, of which $11\frac{1}{2}$ per cent only is revenue producing.

At the rate of 48 cents per crate, minimum 325 crates per car, the earnings on 1 carload of lettuce from St. Andrews to New York are \$156. On lumber at $25\frac{1}{2}$ cents per 100 pounds, minimum 60,000 pounds, Charleston to New York, the revenue per car is \$153. Lumber is a low-grade traffic requiring no special service, and it is contended this rate is depressed by reason of water competition, notwithstanding which, defendants maintain, it produces almost as much revenue per carload as the present rate applied to lettuce.

Incidental to the handling of its vegetable traffic the Atlantic Coast Line Railroad Company pays as rental for the use of refrigerator cars, three-fourths of a cent per mile for all mileage, loaded or empty, made by same while on its rails, amounting to \$12 per car for the movement from St. Andrews to New York and return.

The rate on lettuce, shipped in packages similar to those referred to above, from Jacksonville to New York and Philadelphia, is 43 cents per crate with an added charge for refrigeration of 20 cents per package. However, no lettuce is produced at Jacksonville proper, and this is what may be termed "a basing rate;" that is, the rate of 10 cents per package applied to Jacksonville from Sanford and 20 cents per package from the Manatee River district, where lettuce is grown, must be added to the Jacksonville or High Springs rate in order to arrive at the through rate from point of production to ultimate destination. In the same manner it is contended the rate from Charleston is essentially a basing rate, since very little lettuce or other vegetables originate at that point.

Considerable lettuce is shipped from Fayetteville and Wilmington, N. C., and from the vicinity of Norfolk, Va. The rate to New York from Wilmington and Fayetteville is 35 cents per crate, and from Group 1 points in the Norfolk district 31 cents. All of these points are, of course, very much nearer New York than is Charleston, and traffic from the latter moving via the Atlantic Coast Line passes directly through Fayetteville.

As already stated, the rate on lettuce from Charleston prior to the reduction to 30 cents per crate, on August 27, 1908, was 45 cents per crate, effective April 28, 1908, and this latter rate has been restored by the Southern Railway, effective February 16, 1909, and by the Atlantic Coast Line, effective February 4, 1909.

In the opinion of the Commission the present rate of 48 cents applying on vegetables, n. o. s., beans, peas, and cucumbers, in half-barrel packages, per half barrel, from St. Andrews, S. C., to New York, is not unreasonable. We do not feel warranted, in view of all the conditions under which the transportation service is performed, in entering an order requiring defendants to reduce this rate to 32 cents per half-barrel package, as prayed for by complainant. We do think, however, that the 48-cent rate now in effect should be applied on the 4,385 baskets of lettuce shipped by complainant from St. Andrews to New York City on various dates in March and April, 1908, and which were charged at the rate of 63 cents per half-barrel crate. On this basis defendant should pay to complainant, as reparation on account of the application of this excessive rate of 63 cents per basket on 4,385 baskets of lettuce transported over defendants' lines from St. Andrews, S. C., to New York, N. Y., the sum of \$657.75, with interest thereon at the rate of 6 per cent per annum from May 15, 1908.

Defendants admit that complainant was charged on these shipments \$118.68 in excess of the amount of freight charges due at the rate of 63 cents per basket, and this amount should be refunded immediately without authority or order from the Commission.

An order will be entered in accordance with these views.

No. 1608.
VIRGINIA-CAROLINA CHEMICAL COMPANY
v.
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY.

Submitted February 12, 1909. Decided April 12, 1909.

1. Defendant's rates on fertilizer from Shreveport, La., to certain Arkansas destinations named in the report found unreasonable, and reasonable maximum rates prescribed for the future. Reparation awarded.
2. Fertilizer is a low-grade traffic, subject to no great risk in transit, and requiring no special service for its transportation in the sense that "special service" is generally understood. Its free movement and use is an auxiliary tending to produce and furnish a larger volume of traffic, and thus promote the prosperity of carriers and their patrons; so that, considering both commercial and transportation conditions, it is entitled to comparatively low rates.

John D. Little for complainant.

Roy F. Britton and *S. H. West* for defendant.

REPORT OF THE COMMISSION.

CLEMENTS, Commissioner:

The complainant is a New Jersey corporation engaged in the manufacture and sale of commercial fertilizer in the South Atlantic and Gulf states, operating some 39 factories throughout that territory.

Complaint is made of an alleged unreasonable advance in the rates on commercial fertilizer from Shreveport, La., to points in Arkansas reached by defendant's line of railway, effective January 23, 1906, and complainant asks that the lower rates as published in St. Louis Southwestern tariff No. 2895, I. C. C. No. 1619, effective July 14, 1902, be restored by order of the Commission. Reparation in the amount of \$769.85 is asked on shipments made by complainant from Shreveport to various Arkansas destinations during the seasons of 1906, 1907, and 1908.

The original petition alleges unjust discrimination against Shreveport and in favor of Little Rock, Ark., the rates from the latter point at that time to Arkansas destinations, prescribed by the Arkansas railroad commission, having been materially lower than those now in effect. These rates were enjoined by the Federal court September 3, 1908, and defendant having subsequently advanced the same, complainant at the hearing abandoned its contention as to unjust discrimination in favor of Little Rock as against Shreveport, the rates from Little Rock to Arkansas points now being on a parity

with those from Shreveport for similar distances. On the argument counsel for complainant alleged unjust discrimination against Shreveport and undue preference in favor of Memphis in the present adjustment of rates from these respective points of origin to destinations in Arkansas, testimony having already been taken upon that issue in accordance with an understanding reached between the parties at the hearing.

The Virginia-Carolina Chemical Company began the manufacture of fertilizer at Shreveport in 1905, there being two independent plants already located at that place. This company also operates the only fertilizer factory located at Memphis.

The principal ingredients used in the manufacture of commercial fertilizers are sulphuric acid and phosphate rock. Sulphuric acid is made from pyrites, and this latter ingredient being imported gives an advantage in the cost of manufacture to factories located nearest the Atlantic or Gulf ports. In like manner the cost of production is less at points in closer proximity to the fields where phosphate rock is obtainable, and Memphis being nearer to the Atlantic ports through which may be obtained supplies of pyrites and also to the Carolina and Tennessee phosphate rock fields has a natural geographical advantage, resulting in the cost of producing commercial fertilizer at that point being less by 87 cents per ton than at Shreveport. For similar reasons New Orleans enjoys an advantage over Shreveport of \$1.50 per net ton in the cost of manufacture.

Complainant maintains that rates from Shreveport should not be measured by those applying from Memphis to Arkansas points, because the latter bear an arbitrary of 30 cents per ton paid to the Memphis Bridge Company for the use of its bridge over the Mississippi River by defendant and also because defendant, having no rails into Memphis, operates over the tracks of the St. Louis, Iron Mountain & Southern Railway into and out of that place, for which it pays to the last-named company 60 cents per ton on all traffic so handled.

Defendant contends that at the time of the establishment of the rates from Shreveport to Arkansas points on its rails in 1902 very little commercial fertilizer was used in Arkansas, and this industry was in its infancy. The Caddo Fertilizer Company, one of the competitors which complainant met in Shreveport at the time it began operating its plant there, requested defendant to establish a low line of rates to points in Arkansas reached by the St. Louis Southwestern Railway for the purpose of enabling the Caddo Company to do "missionary work;" that is, to build up its business in that territory by bringing the farmers to a realization of the benefits to accrue from the use of that product. The Caddo Company represented to defendant that in order to further this purpose it was necessary to place the fertilizer at a very low cost to the consumer. Because of

these representations defendant established what it contends were abnormally low rates, which remained in effect from July 14, 1902, to January 23, 1906, inclusive. On the latter date these rates were readjusted, it being contended by defendant that in doing so it purposed so to graduate the rates that they would be equalized as between Memphis and Shreveport at a point midway on its line between those cities.

The following table shows the distances and also the rates prior and subsequent to the advance effective January 23, 1906, from Shreveport to various Arkansas points (minimum carload weight 30,000 pounds):

Destination.	Miles from Shreveport.	Former rates (per ton).	New rates (per ton).
Bradley, Ark.....	43.4	\$1.00	\$2.00
Lewisville, Ark.....	62.2	1.20	2.00
Stamps, Ark.....	66.7	1.20	2.00
Buckner, Ark.....	70.5	1.20	2.00
Lumber, Ark.....	75.1	1.30	2.00
Waldo, Ark.....	78.6	1.30	2.00
McNeil, Ark.....	83.8	1.30	2.00
Stephens, Ark.....	94.0	1.30	2.00
Buena Vista, Ark.....	102.9	1.40	2.20
Camden, Ark.....	114.3	1.40	2.20
Eagle Mills, Ark.....	124.5	1.40	2.20
Bearden, Ark.....	130.7	1.40	2.20
Thornton, Ark.....	138.9	1.40	2.20
Fordyce, Ark.....	144.5	1.42	2.20
Kingsland, Ark.....	152.1	1.50	2.20
Rison, Ark.....	162.1	1.60	2.40
Pine Bluff, Ark.....	184.2	1.81	2.60
Rob Roy, Ark.....	191.7	1.89	2.80
Althamer, Ark.....	195.8	1.94	2.80

The following is a comparison of rates on fertilizer from Shreveport to St. Louis Southwestern stations in Arkansas with rates to stations on the St. Louis, Iron Mountain & Southern, Texas & Pacific, and Kansas City Southern roads, approximately similar distances from the same point of origin:

To—	Located on—	Distance (miles).	Fertilizer rates (per ton of 2,000 pounds).
Lewisville, Ark.....	St. Louis Southwestern.....	62	\$2.00
Boyd, Ark.....	Texas & Pacific.....	62	2.40
Ravanna, Ark.....	Kansas City Southern.....	48	1.00
Waldo, Ark.....	St. Louis Southwestern.....	79	2.00
Mandeville, Ark.....	Iron Mountain.....	79	2.00
Ogden, Ark.....	Kansas City Southern.....	85	1.00
Stephens, Ark.....	St. Louis Southwestern.....	94	2.00
Sprudel, Ark.....	Iron Mountain.....	94	2.00
Ashdown, Ark.....	Kansas City Southern.....	92	1.00
Buena Vista, Ark.....	St. Louis Southwestern.....	103	2.20
Hope, Ark.....	Iron Mountain.....	105	2.00
Allene, Ark.....	Kansas City Southern.....	103	1.03
Eagle Mills, Ark.....	St. Louis Southwestern.....	125	2.20
Boughton, Ark.....	Iron Mountain.....	125	2.00
De Queen, Ark.....	Kansas City Southern.....	126	1.26
Thornton, Ark.....	St. Louis Southwestern.....	139	2.20
Smithton, Ark.....	Iron Mountain.....	138	2.00
Gilham, Ark.....	Kansas City Southern.....	138	1.38
Kedron, Ark.....	St. Louis Southwestern.....	160	2.40
Elmore, Ark.....	Iron Mountain.....	166	2.10
Hatfield, Ark.....	Kansas City Southern.....	167	1.67

The following table shows rates in effect from Memphis, Tenn., to the destinations named in Arkansas and Missouri on the rails of the St. Louis, Iron Mountain & Southern Railway, also the distances between Memphis and these respective points, to wit:

Rates on fertilizer, carloads, from Memphis, Tenn.

To—	Distances (miles).	Rates in cents per 100 pounds.	Carload minimum (pounds).
Bald Knob, Ark.....	92	7	24,000
Beebe, Ark.....	117	8	24,000
Arkadelphia, Ark.....	215	13	24,000
Oneida, Ark.....	126	10	24,000
Watson, Ark.....	177	13½	24,000
Arkansas City, Ark.....	261	7½	30,000
Galena, Mo.....	330	13	40,000
Branson, Mo.....	309	13	40,000

The Commission can not undertake to order the rates from Shreveport to these Arkansas destinations reduced merely upon the assumption that because the defendant has certain rental charges to pay as incidental to the handling of its traffic out of Memphis, the alignment of the Shreveport rates for similar distances with those applying from Memphis is unwarranted. Neither can the Commission order a reduction in these rates to enable the Shreveport factories to overcome natural advantages enjoyed by competitive producing points and resulting in a lower cost of production. Admittedly both New Orleans and Memphis are enabled to enter Shreveport's territory because of this condition, even at points where Shreveport is on a parity as to freight rates, and it appears that because of the lower cost of production at Memphis the Virginia-Carolina Chemical Company finds it to its interest to supply orders from its Memphis factory at points on the St. Louis Southwestern nearer to Shreveport and to which places freight rates are lower from the last-mentioned point of origin. At the time petition was filed complainant undoubtedly was restricted in the territory which it could reach from its Shreveport factory by the competition of Little Rock concerns in the same field. Since that time the defendant has advanced its rates from Little Rock to other Arkansas points following the injunction issued by the Federal court against the materially lower rates from that point prescribed by the Arkansas commission. The Commission does not feel warranted in ordering the reestablishment of the rates in effect from Shreveport prior to January 23, 1906, for the purpose of further restoring this Arkansas field to Shreveport factories.

Aside from these considerations, however, we are convinced that certain of the advanced rates are unreasonable and unjust. Fertilizer is a low-grade traffic, subject to no great risk in transit and requiring no special service for its transportation in the

sense that "special service" is generally understood. Its free movement and use is an auxiliary tending to produce and furnish a larger volume of traffic and thus promote the prosperity of carriers and their patrons, so that considering both commercial and transportation conditions it is entitled to comparatively low rates.

The Commission is of the opinion that the rates on fertilizer from Shreveport to the Arkansas destinations named below should not exceed the following in cents per 100 pounds as maxima to be charged in the future, to wit:

Rates on fertilizer, in cents per 100 pounds.

From Shreveport, La., to—	Carloads (minimum, 30,000 pounds).	Less than carloads.
Bradley, Ark.....	8	18
Frostville, Ark.....	8	18
Canfield, Ark.....	8	18
Kress City, Ark.....	8	20
Milton, Ark.....	8	20
Genoa, Ark.....	8	20
Texarkana, Ark.....	8	20
McKinney, Ark.....	8	20
Moore, Ark.....	8	20
Garland City, Ark.....	8	20
Spirit Lake, Ark.....	8	20
Jeolla, Ark.....	8	20
Lewisville, Ark.....	8	20
Stamps, Ark.....	8	20
Buckner, Ark.....	8	20
Lumber, Ark.....	8	20
Waldo, Ark.....	8	20
McNeil, Ark.....	8	20
Magnesia Springs, Ark.....	8	20
Milner, Ark.....	8	20
Hodgsons, Ark.....	8	21
Stephens, Ark.....	8	21
Ogemaw, Ark.....	8	22
Buena Vista, Ark.....	9	25
Moro, Ark.....	9	25
Finn, Ark.....	9	25
Gratton, Ark.....	9	25
Camden, Ark.....	9	25
Onalaska, Ark.....	9	25
Eagle Mills, Ark.....	9	25
Gravel Pit, Ark.....	9	25
Millville, Ark.....	9	25
Bearden, Ark.....	9	25
Bests, Ark.....	9	25
Harlow, Ark.....	9	25
Little Bay, Ark.....	9	25
Thornton, Ark.....	9	25
Fordyce, Ark.....	9	25
Farrars, Ark.....	9	25
Kingsland, Ark.....	9	25
Draughon, Ark.....	9	25
Saline, Ark.....	9	25
Pool, Ark.....	9	25
Rison, Ark.....	10	25
Porters Mill, Ark.....	10	25
Cabool Ark.....	10	25
Kedron, Ark.....	10	25
Gracie, Ark.....	10	26
Sorreils, Ark.....	10	27
Pine Bluff, Ark.....	10	28
Ezell, Ark.....	10	28
Dumbeck, Ark.....	11	30
Rob Roy, Ark.....	11	30
Alzheimer, Ark.....	11	30
McGaughy, Ark.....	11	30
Ellison, Ark.....	11	30
Haywood, Ark.....	11	30
Sherrill, Ark.....	11	30
Tucker, Ark.....	12	30
Ferda, Ark.....	12	30

Rates on fertilizer, in cents per 100 pounds—Continued.

From Shreveport, La., to—	Carloads (minimum, 30,000 pounds).	Less than carloads.
Pen Spur, Ark.....	12	32
England, Ark.....	12	32
Kco, Ark.....	12	33
Wilobel, Ark.....	12	33
Toltec, Ark.....	12	33
Scotts, Ark.....	12	34
Baucum, Ark.....	12	34

These rates while lower in some instances than those now applied are materially higher in most cases than the rates which were voluntarily maintained by the St. Louis Southwestern Railway during the period from July 14, 1902, to January 23, 1906.

On various dates in the months of February, March, and April, 1907, complainant shipped from Shreveport, La., to Waldo, Ark., 4 carloads of fertilizer aggregating 90 net tons; to McNeil, Ark., 2 carloads aggregating 66 net tons; to Buckner, Ark., 2 carloads aggregating 50 net tons; to Stephens, Ark., 1 carload, 20 net tons; to Bradley, Ark., 8 carloads, 70 net tons, all at freight rates of \$2 per ton; and on June 7, to Lewisville, Ark., 1 net ton at a less than carload rate of \$5 per ton. During February, March, and April, 1908, complainant shipped from Shreveport to Buckner, Ark., 1 carload of 20 net tons; to McNeil, 1 carload of 26.5 net tons; to Waldo, 12 carloads, 281 net tons, all at freight rates of \$2 per ton; to Buena Vista, Ark., 2 carloads, 36 net tons, \$2.20 per ton; to Bradley, 1 carload, 20 net tons, \$2 per ton; to Lumber, 1 carload, 16 net tons, \$2 per ton; to Eagle Mills, 1 carload, 35 net tons, \$2.20 per ton; and to Lewisville, 4.5 net tons at a less than carload rate of \$5 per ton. On all these shipments aggregate charges were collected amounting to \$1,502.70.

Upon the basis of the rates herein prescribed complainant is entitled to recover from defendant as reparation on account of the exaction of unreasonable and unjust transportation charges on 12 carloads of fertilizer, aggregating 296 tons, and one less than carload shipment of 1 ton, forwarded by complainant over defendant's line of railway from Shreveport to Waldo, McNeil, Buckner, Stephens, Bradley, and Lewisville, Ark., during the period from March 4 to June 7, 1907, the sum of \$96.80, with interest thereon at the rate of 6 per cent per annum from June 15, 1907; and the further sum of \$143.95, with interest at the rate of 6 per cent per annum from May 15, 1908, this latter being the amount of the excess charges paid by complainant on 19 carloads, consisting of 434.5 tons, and two less than carload shipments of 1.5 and 3 tons, respectively, from Shreveport to Buckner, McNeil, Waldo, Buena Vista, Bradley, Lumber, Eagle Mills, and

Lewisville, Ark., respectively, during the period from February 3 to April 30, 1908.

Bills of lading and copies of invoices covering the several shipments above referred to are filed in the record of this case.

The complainant's claim for reparation also includes 14 carloads, aggregating 274 tons, shipped from Shreveport to McNeil, Stamps, Bradley, and Waldo on various dates during the period from February 9 to April 11, 1906, but the claim not having been presented to the Commission until June 19, 1908, these items are barred by the statute of limitations.

An order will be entered in accordance with these conclusions.

16 L. C. C. Rep.

No. 1042.
INDIANAPOLIS FREIGHT BUREAU
v.
**CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAIL-
WAY COMPANY ET AL.**

Submitted May 1, 1908. Decided April 14, 1909.

1. Complainant alleges the exaction by defendants of unjust and unreasonable class rates from Indianapolis, Ind., to Missouri River points in and of themselves and as compared with rates on similar traffic from Chicago, Ill.; also challenges defendants' rates on chairs and furniture from Indianapolis to Missouri River points; *Held*, That the present class rates on through traffic from Indianapolis to Missouri River points are unreasonable and subject Indianapolis to unreasonable prejudice and give to Chicago undue preference. A relative adjustment as between Indianapolis and Chicago is prescribed; also reasonable maximum rates to be applied in the future to the transportation of class-rate traffic and chairs and furniture from Indianapolis to Missouri River points. Order relative to class rates and relative adjustment thereof withheld pending court decision on *Burnham, Hanna, Munger case*, 14 I. C. C. Rep., 299.
2. While it may not be doubted that competitive conditions are responsible for the present rates applying from Chicago, yet, giving full weight to such considerations, it is the province of the Commission to determine whether the disparities between the total charges from Chicago and Indianapolis, respectively, are greater than are justified by the recognized dissimilarity of conditions.
3. Whatever may be the general effect of an order changing the rate structure for a typical point in a group, the Commission can not, under the law, deny relief to such point for the sole reason that other points in like situation may be able to show that they are entitled to a similar order. Any order which the Commission may have authority to enter must be predicated upon the complaint which is before it, after examination into the facts, circumstances, and conditions appertaining thereto, and such order is limited in its scope by the petition filed in the particular case to which it is addressed. If other points in the same territory are properly entitled to relief by order of the Commission, proceedings specifically directed to that end must be prosecuted in the manner prescribed by law to vest the Commission with authority. Whether or not such other points

are entitled to similar relief depends upon the facts, circumstances, and conditions appearing upon investigation, and those questions can not be determined in this case.

Edward E. Gates and *W. A. Ketcham* for complainant.

O. E. Butterfield for Cleveland, Cincinnati, Chicago & St. Louis Railway Company and Lake Erie & Western Railroad Company.

John G. Williams for Pittsburg, Cincinnati, Chicago & St. Louis Railway Company and Vandalia Railroad Company.

George W. Kretzinger for Chicago, Indianapolis & Louisville Railway Company, Cincinnati, Hamilton & Dayton Railway Company, and Judson Harmon, receiver.

S. A. Lynde for Chicago & Northwestern Railway Company and Chicago, Milwaukee & St. Paul Railway Company.

Chester M. Dawes for Chicago, Burlington & Quincy Railroad Company.

E. B. Peirce for Atchison, Topeka & Santa Fe Railway Company, Chicago, Rock Island & Pacific Railway Company, Chicago & Eastern Illinois Railroad Company, and St. Louis & San Francisco Railroad Company.

A. E. Kepperley for Illinois Central Railroad Company.

B. M. Flippin for Missouri Pacific Railway Company.

F. A. Leland for Missouri, Kansas & Texas Railway Company.

Samuel O. Pickins for Pittsburg, Cincinnati, Chicago & St. Louis Railway Company.

John E. Hollett for Commercial Club, Indianapolis, intervener.

C. C. Hanch for Manufacturers' Association of Indianapolis, intervener.

H. C. Atkins for Board of Trade of Indianapolis, intervener.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

The complainant in this case is a voluntary association of persons, firms, and corporations of the city of Indianapolis, Ind.

The petition alleges that defendants exact unjust and unreasonable class rates on traffic from Indianapolis to Missouri River points, viz, Kansas City, Mo., Leavenworth and Atchison, Kans., St. Joseph, Mo., and Omaha, Nebr., *per se*, and as compared with rates on similar traffic from Chicago, Ill., to same destinations.

The petition also questions the reasonableness and justness of defendants' rates on chairs and furniture, in carloads, from Indianapolis to Missouri River points.

Rates from Indianapolis to Missouri River points are constructed by adding the local rates from Indianapolis to East St. Louis to the local rates beyond, the rates applying to East St. Louis being used

as bases in making up the through rate to be applied via any Mississippi River crossing between East St. Louis, Ill., and Dubuque, Iowa.

Shipments from Indianapolis to Missouri River points are carried through to destination by the connecting lines upon bills of lading issued at Indianapolis, and without the intervention of the shipper at any junction point.

The local class rates, in cents per 100 pounds, in effect from Indianapolis to East St. Louis at the time of filing the petition herein, April 26, 1907, and on the date of the hearing of this case were—

Class.....	1	2	3	4	5	6
Rate	37	32	23½	16	13½	10½

Since the hearing on March 18, 1908, these rates have been advanced, effective March 26, 1908, to the following:

Class....	1	2	3	4	5	6
Rate	38	32½	24	16½	13½	10½

The through rates as applied on traffic from Chicago to Missouri River points are constructed by adding arbitrary differentials to the local rates from the Mississippi River crossings to Missouri River points. No differential has been established to apply on 6th class for the reason that the Western Classification contains no provision for 6th class ratings beyond the Mississippi River. The differentials from Chicago to the Mississippi River crossings are—

Class.....	1	2	3	4	5	A	B	C	D	E
Differential....	20	20	10	5	5	7½	7½	5	5	5

The local rates from Mississippi River crossings to Missouri River points are, in cents per 100 pounds:

Class....	1	2	3	4	5	A	B	C	D	E
Rate	60	45	35	27	22	24½	19½	17	13½	11

The local rates in cents per 100 pounds from Chicago to several Mississippi River crossings are as follows:

Rates from Chicago.

Rate to—	Class.					
	1	2	3	4	5	6
Dubuque	Cents. 38.4	Cents. 30.7	Cents. 23.8	Cents. 19.1	Cents. 15.3	Cents. 14.7
Clinton	37.5	29.8	23.1	18.7	14.9	14.3
Savanna	35.3	27.8	21.7	17.4	14	13.3
Davenport	37.5	29.8	23.1	18.7	14.9	14.3
East St. Louis.....	43.3	35.2	27.5	22.0	17.6	16.6

Roads operating in Central Freight Association territory do not publish through rates to Missouri River points, the Mississippi River crossings being treated as basing points in the construction of these rates. The local rate to East St. Louis is applied as a proportional on traffic moving via Mississippi River crossings as far north as East Dubuque for the reason that certain western roads do not operate from East St. Louis to the Missouri River and it is necessary to use the same rate to all crossing points in order that all routes may participate in the traffic.

It is contended by defendants that the application of differential bases from group points in Illinois is entirely due to the competition of direct through lines to the Missouri River; that the boundaries of the Illinois territory from which such group rates apply are logically prescribed by lines affording direct competition, and that the western roads can afford to make comparatively low rates from Chicago and other Illinois territory in which they compete because they receive the outbound haul from the Mississippi River.

The division of the rate applying from Chicago to the Missouri River via East St. Louis is 45 per cent to the lines east of that crossing and 55 per cent west thereof, so that through that gateway the carriers east of the Mississippi River receive a proportion greater than the differential (i. e., out of the first class through rate of 80 cents they receive 36 cents), and the carriers west of the river receive less than their local rate on such through traffic originating at Chicago, while on traffic originating at Indianapolis the roads west of the river receive the entire amount of their local class rate for that part of the haul from East St. Louis to Missouri River points.

The short-line distance from Chicago to the Mississippi River is 135 miles, and from Indianapolis 242 miles; thus, the distance from Chicago to the nearest Mississippi River crossing is 56 per cent of the Indianapolis short-line distance, and the Chicago differential of 20 cents, first class, is in approximately the same proportion to the first-class rate of 38 cents applying from Indianapolis. It is therefore contended by defendants that since the same rate is applied on Chicago and Indianapolis traffic between the Mississippi River crossings and Missouri River points, and since the differential from Chicago to the Mississippi River bears the same relation to the short-line distance as does the rate from Indianapolis to the distance from that point to the nearest crossing, there is no foundation for the complaint. It must, however, be remembered that after all it is the total rate to the Missouri River points which is here involved, and therefore it is necessary to consider the entire rate as applied to the entire service.

The rates now in effect covering the average short-line haul of 524 miles from Indianapolis to Missouri River points yield revenue per

ton per mile: First class, 3.74 cents; second class, 2.96 cents; third class, 2.25 cents; fourth class, 1.66 cents; fifth class, 1.35 cents.

The rates applying from Chicago to Missouri River points, covering an average haul of 484 miles, yield per ton per mile: First class, 3.3 cents; second class, 2.68 cents; third class, 1.86 cents; fourth class, 1.32 cents; fifth class, 1.12 cents.

Chicago is one of the greatest railroad centers in the world, being served by some twenty-five great systems, reaching out in all directions. Seven of these railroads operate through routes between Chicago and Kansas City; 4 run from Chicago to Leavenworth and St. Joseph; 3 reach Atchison; and 7 reach Omaha.

There is no through road operating over its own rails from Indianapolis to Missouri River points, although the Illinois Central may be said to connect Indianapolis with Omaha if the Indianapolis Southern line between Effingham, Ill., and Indianapolis be considered a part of that system. This route also serves both Indianapolis and Chicago in the handling of traffic to St. Louis and East St. Louis. The only other lines operating from both Chicago and Indianapolis to East St. Louis are the Cleveland, Cincinnati, Chicago & St. Louis and the Pennsylvania lines—Vandalia and Pittsburg, Cincinnati, Chicago & St. Louis.

Naturally a road operating a direct through line has a more controlling voice in the fixing of rates between two points, both of which are served by it, than another route made up of two or more separate roads which participate in the haul and which must come to an understanding as to the rates to be charged, having consideration for the respective points of origin and destination which they serve, to see that the basis agreed upon is relatively fair.

A railroad serving both Chicago and Kansas City occupies a stronger strategic position for according lower rates on traffic moving between those places than can be applied by the carriers serving Indianapolis but not reaching Kansas City. And when we consider that there are seven such direct through lines reaching Kansas City from Chicago and none from Indianapolis, it is apparent that Chicago has the advantage of competition which naturally results in lower rates. However, while it may not be doubted that competitive conditions are responsible for the present rates from Chicago and from the other Illinois territory having the benefit of differential bases to the Mississippi River on through traffic to Missouri River points, yet giving full weight to such considerations we must determine whether the disparity between the total charges from Indianapolis and the total charges from Chicago to Missouri River points is greater than is justified by the dissimilarity in conditions, and

whether the charges on the various classes from Indianapolis to the Missouri River cities are just and reasonable, and in determining this we must consider whether the discrimination against Indianapolis is due in whole or in part to the exaction of exorbitant rates from that place.

If, as claimed by defendants, the several western roads operating through from Chicago to Missouri River points make the rates from Chicago, which must be met by lines which do not extend beyond the Mississippi, it would seem that such western lines are not under coercion to divide the Chicago rate upon so liberal a basis as that now in vogue through the St. Louis gateway, and that therefore the present divisions were voluntarily established by them. But admitting that the western lines are forced by the roads east of the river to concede to the latter a part of the local rate between the rivers, why is not the condition which makes it possible for such eastern lines to force this concession as to the Chicago rates more potent as to Indianapolis? There are no through roads from Indianapolis, and all traffic therefrom is therefore originated by lines which end at the Mississippi River. It must be apparent that these originating carriers at Indianapolis, controlling as they do the routing of the traffic beyond the river, could have a stronger voice in determining the divisions of the through rate than have the lines operating from Chicago, and that if the lines east of the Mississippi River insisted upon a division which would leave the lines west of the river something less than their full locals, that demand would be acceded to. This, however, is not necessary, because at present each of the participating carriers receives on Indianapolis traffic its full local rate.

The rate per ton per mile on first class traffic for the average haul from Indianapolis to Missouri River points is 3.74 cents; for that part of the haul between Indianapolis and the Mississippi River, 3.14 cents, and between the Mississippi River crossings and Missouri River points, 4.25 cents.

While complainant lays particular stress upon the allegation of unreasonableness in the rates applying up to the Mississippi River crossings as compared with the differentials applying on through traffic from Chicago, it is, of course, the through rates to Missouri River points in which it is mainly interested and against which the complaint is really directed.

The facts are that, under the long-established system of rate making in the territory between the Atlantic seaboard and the Mississippi River, East St. Louis, Ill., and St. Louis, Mo., take 117 per cent of the New York-Chicago rate. East St. Louis is the nearest to New York of the Mississippi River crossings, and at least one

system of railroad has its own lines and rails from New York, Philadelphia, and Baltimore on the east to St. Louis on the west. This line makes the rates from the seaboard to St. Louis, and the lines operating through the upper Mississippi River crossings in connection with lines from the seaboard apply that rate as a proportional rate up to the Mississippi River on through business moving through those crossings.

As has been noted, a similar system is applied on traffic from Indianapolis. But the lines between the Mississippi River and the Missouri River exact their full local rates upon all of this traffic, those local rates being their separately established rates applicable to the through business. This is so because they maintain as to business moving from Indianapolis and east thereof a basing line upon the Mississippi River. They do not, however, adhere to this basing line system on traffic moving from Chicago to many points west and southwest. For example, on traffic from the east to Montana points they apply between Chicago and the Missouri River the same rates that apply between Chicago and St. Paul, and on traffic from Chicago to Texas points and to Oklahoma they accept less than the full combination on the Mississippi River. By the use of proportional rates and by shrinking the full combination of rates on Chicago and the upper Mississippi River crossings the rates established from Indianapolis to the Missouri River through St. Louis are made to apply from Indianapolis to the Missouri River through the upper Mississippi River crossings.

In the *Burnham, Hanna, Munger case*, 14 I. C. C. Rep., 299, we said:

It must not, however, be assumed that a basing line for rates may be established and be made an impassable barrier for through rates, or that cities or markets located at or upon such basing line have any inviolable possession of or hold upon the right to distribute traffic in or from the territory lying beyond. Development of natural resources, increase in population, growth of manufacturing or producing facilities, and increased traffic on railroads create changed conditions which may warrant changes in rates and in rate adjustments in order to afford just and reasonable opportunity for interchange of traffic between points of production and points of large consumption.

In that proceeding we dealt only with the class rates on the first five classes from Atlantic seaboard territory to the Missouri River, because those were the only rates brought in issue by that complaint. What was there found and said as to the unreasonableness of exacting the full local rates west of the Mississippi River as portions of the through rates applies also and with equal force to the situation now before us.

As has been seen, the local rates from Indianapolis to St. Louis, and which are applicable as parts of the through rates, are in sub-

stantially the same proportion to the distance from Indianapolis to St. Louis as the differential rates applied from Chicago to the Mississippi River as parts of the through rates are to the short-line distance from Chicago to the Mississippi River. The average short-line distance from Indianapolis to the Missouri River has been seen to be 524 miles and the first class rate 98 cents, while the average distance from Chicago to the Missouri River is 484 miles and the first-class rate is 80 cents. Measured, therefore, by the distance, by the earnings per ton per mile, by similar rates on the same traffic in similar territories, as well as by consideration of the extra terminal services that may be demanded under a full combination of local rates, we think that the through class rates from Indianapolis to the Missouri River are unreasonably high and that they are so unreasonably high because the portions of same that are exacted by the carriers between the Mississippi River and the Missouri River are unreasonably high in and of themselves. We also find that the through class rates, based on 98 cents per 100 pounds first class, from Indianapolis to the Missouri River, subject Indianapolis to unreasonable prejudice and disadvantage as compared with the class rates from Chicago to the Missouri River, based upon 80 cents per 100 pounds first class, and that the present relationship of rates to the Missouri River as between Chicago and Indianapolis gives the former undue preference. Some of the defendants herein join in the rates from both Chicago and Indianapolis to the Mississippi River. Some of them join in the rates from the Mississippi to the Missouri River on traffic from both Indianapolis and Chicago. All of them that have lines from Chicago to the Missouri River, from St. Louis to the Missouri River, or from one or more of the Mississippi River crossings to one or more of the Missouri River crossings, join in rates from Indianapolis to the Missouri River, and so contribute to this undue preference to Chicago and undue prejudice against Indianapolis, which can be permanently removed only by a change in the relationship of rates.

In the *Burnham, Hanna, Munger case, supra*, no through joint rates were in effect. Traffic and classification territories which had been built up by the carriers resulted in the establishment of a basing line upon the Mississippi River. The rates were dealt with as they were found, and the system of rate making and general adjustment was disturbed as little as was possible in order to do simple justice in the situation there presented. The same situation and system of rate construction and application are present in the instant case. The rates applied to the Indianapolis traffic for the haul west of the Mississippi River are the same that were condemned as parts of the

through rates in the *Interstate Commerce Commission*. They were not well understood as parts of the through rates from the Atlantic seaboard to the Missouri River in so far as they exceeded the through rates from the Atlantic seaboard.

100	100	100	100	100
100	100	100	100	100

The *Interstate Commerce Commission* is now making a study of the rates based upon the distance. Indian-traffic from the Missouri River to the Atlantic seaboard, and the rates from the Atlantic seaboard to the Missouri River, are a serious principle of rate making, and the rates from the Atlantic seaboard to the Missouri River are parts of the through rates from the Atlantic seaboard.

The rates from the Atlantic seaboard to the Missouri River are parts of the through rates from the Atlantic seaboard to the Missouri River, and the rates from the Missouri River to the Atlantic seaboard are unreasonable and should be reduced to the following rates per 100 pounds:

100	100	100	100	100
100	100	100	100	100

The rates from the Atlantic seaboard to the Missouri River are parts of the through rates from the Atlantic seaboard to the Missouri River, and the rates from the Missouri River to the Atlantic seaboard are unreasonable and should be reduced to the following rates per 100 pounds: For example, the average revenue per ton-mile for the *Atlantic, Topeka & Santa Fe*, *Chicago & North Western*, *Chicago & Eastern*, *Chicago & Great Western*, *Chicago & Illinois Central*, *Chicago & Rock Island*, *Chicago & St. Louis*, *Chicago & Texas*, *Chicago & Western*, *Chicago & Wisconsin*, *Chicago & Wyoming*, *Chicago & Montana*, *Chicago & Idaho*, *Chicago & Utah*, *Chicago & Arizona*, *Chicago & New Mexico*, *Chicago & Colorado*, *Chicago & Kansas*, *Chicago & Nebraska*, *Chicago & Oklahoma*, *Chicago & Texas*, *Chicago & Missouri*, *Chicago & Arkansas*, *Chicago & Louisiana*, *Chicago & Mississippi*, *Chicago & Alabama*, *Chicago & Georgia*, *Chicago & Florida*, *Chicago & South Carolina*, *Chicago & North Carolina*, *Chicago & Virginia*, *Chicago & West Virginia*, *Chicago & Maryland*, *Chicago & Delaware*, *Chicago & Pennsylvania*, *Chicago & New Jersey*, *Chicago & New York*, *Chicago & Connecticut*, *Chicago & Rhode Island*, *Chicago & Massachusetts*, *Chicago & Vermont*, *Chicago & New Hampshire*, *Chicago & Maine*, *Chicago & New Brunswick*, *Chicago & Nova Scotia*, *Chicago & Prince Edward Island*, *Chicago & Newfound*.

The rates from the Atlantic seaboard to the Missouri River are parts of the through rates from the Atlantic seaboard to the Missouri River, and the rates from the Missouri River to the Atlantic seaboard are unreasonable and should be reduced to the following rates per 100 pounds: For example, the average revenue per ton-mile for the *Atlantic, Topeka & Santa Fe*, *Chicago & North Western*, *Chicago & Eastern*, *Chicago & Great Western*, *Chicago & Illinois Central*, *Chicago & Rock Island*, *Chicago & St. Louis*, *Chicago & Texas*, *Chicago & Western*, *Chicago & Wisconsin*, *Chicago & Wyoming*, *Chicago & Montana*, *Chicago & Idaho*, *Chicago & Utah*, *Chicago & Arizona*, *Chicago & New Mexico*, *Chicago & Colorado*, *Chicago & Kansas*, *Chicago & Nebraska*, *Chicago & Oklahoma*, *Chicago & Texas*, *Chicago & Missouri*, *Chicago & Arkansas*, *Chicago & Louisiana*, *Chicago & Mississippi*, *Chicago & Alabama*, *Chicago & Georgia*, *Chicago & Florida*, *Chicago & South Carolina*, *Chicago & North Carolina*, *Chicago & Virginia*, *Chicago & West Virginia*, *Chicago & Maryland*, *Chicago & Delaware*, *Chicago & Pennsylvania*, *Chicago & New Jersey*, *Chicago & New York*, *Chicago & Connecticut*, *Chicago & Rhode Island*, *Chicago & Massachusetts*, *Chicago & Vermont*, *Chicago & New Hampshire*, *Chicago & Maine*, *Chicago & New Brunswick*, *Chicago & Nova Scotia*, *Chicago & Prince Edward Island*, *Chicago & Newfound*.

The rates from the Atlantic seaboard to the Missouri River are parts of the through rates from the Atlantic seaboard to the Missouri River, and the rates from the Missouri River to the Atlantic seaboard are unreasonable and should be reduced to the following rates per 100 pounds: For example, the average revenue per ton-mile for the *Atlantic, Topeka & Santa Fe*, *Chicago & North Western*, *Chicago & Eastern*, *Chicago & Great Western*, *Chicago & Illinois Central*, *Chicago & Rock Island*, *Chicago & St. Louis*, *Chicago & Texas*, *Chicago & Western*, *Chicago & Wisconsin*, *Chicago & Wyoming*, *Chicago & Montana*, *Chicago & Idaho*, *Chicago & Utah*, *Chicago & Arizona*, *Chicago & New Mexico*, *Chicago & Colorado*, *Chicago & Kansas*, *Chicago & Nebraska*, *Chicago & Oklahoma*, *Chicago & Texas*, *Chicago & Missouri*, *Chicago & Arkansas*, *Chicago & Louisiana*, *Chicago & Mississippi*, *Chicago & Alabama*, *Chicago & Georgia*, *Chicago & Florida*, *Chicago & South Carolina*, *Chicago & North Carolina*, *Chicago & Virginia*, *Chicago & West Virginia*, *Chicago & Maryland*, *Chicago & Delaware*, *Chicago & Pennsylvania*, *Chicago & New Jersey*, *Chicago & New York*, *Chicago & Connecticut*, *Chicago & Rhode Island*, *Chicago & Massachusetts*, *Chicago & Vermont*, *Chicago & New Hampshire*, *Chicago & Maine*, *Chicago & New Brunswick*, *Chicago & Nova Scotia*, *Chicago & Prince Edward Island*, *Chicago & Newfound*.

The rates from the Atlantic seaboard to the Missouri River are parts of the through rates from the Atlantic seaboard to the Missouri River, and the rates from the Missouri River to the Atlantic seaboard are unreasonable and should be reduced to the following rates per 100 pounds: For example, the average revenue per ton-mile for the *Atlantic, Topeka & Santa Fe*, *Chicago & North Western*, *Chicago & Eastern*, *Chicago & Great Western*, *Chicago & Illinois Central*, *Chicago & Rock Island*, *Chicago & St. Louis*, *Chicago & Texas*, *Chicago & Western*, *Chicago & Wisconsin*, *Chicago & Wyoming*, *Chicago & Montana*, *Chicago & Idaho*, *Chicago & Utah*, *Chicago & Arizona*, *Chicago & New Mexico*, *Chicago & Colorado*, *Chicago & Kansas*, *Chicago & Nebraska*, *Chicago & Oklahoma*, *Chicago & Texas*, *Chicago & Missouri*, *Chicago & Arkansas*, *Chicago & Louisiana*, *Chicago & Mississippi*, *Chicago & Alabama*, *Chicago & Georgia*, *Chicago & Florida*, *Chicago & South Carolina*, *Chicago & North Carolina*, *Chicago & Virginia*, *Chicago & West Virginia*, *Chicago & Maryland*, *Chicago & Delaware*, *Chicago & Pennsylvania*, *Chicago & New Jersey*, *Chicago & New York*, *Chicago & Connecticut*, *Chicago & Rhode Island*, *Chicago & Massachusetts*, *Chicago & Vermont*, *Chicago & New Hampshire*, *Chicago & Maine*, *Chicago & New Brunswick*, *Chicago & Nova Scotia*, *Chicago & Prince Edward Island*, *Chicago & Newfound*.

classes. The Western Classification, which governs from the Mississippi River to the Missouri River, provides for five numbered and five lettered classes. It is therefore impossible to here show approximately the effect of these findings beyond the first five classes. The details of alignment of rates in accordance with these conclusions must be worked out by the carriers through their classifications and tariffs. As to the traffic which moves from the east to the upper Mississippi River crossings, the carriers have found it consistent to apply the Official Classification up to the Mississippi River. They have also found it possible, under certain tariffs, to apply Western Classification from points of origin through to destination on traffic moving from points in Official Classification territory to points in Western Classification territory. Difficulties of this nature will present themselves until such time as a uniform classification has been adopted.

We also find that it is unduly prejudicial against Indianapolis and unduly preferential to Chicago to have the rates on the classes from Indianapolis to Missouri River exceed the rates simultaneously in effect on the same classes from Chicago to the Missouri River by more than the following, in cents per 100 pounds:

Class	1	2	3	4	5	6
Difference....	13	12	11	10	7	6

At the time of filing this complaint there were no commodity carload rates on chairs from Indianapolis to Missouri River points via the Mississippi River crossings. A rate of one and a half times first class was applied on such shipments in any quantity, making the combination via East St. Louis 78 cents per 100 pounds. Indianapolis being intermediate between Cincinnati and Chicago, the Cincinnati rate of 34 cents to Chicago, plus 32 cents, Chicago to the Missouri River, afforded the best basis available. A carload rate of 55 cents per 100 pounds has since been established from Indianapolis to Missouri River points, made up of the second class rate of 32½ cents, 10,000-pound minimum, to East St. Louis, plus a commodity rate of 22½ cents on a 20,000-pound minimum beyond.

Two rates are available from Chicago, one of 32 cents per 100 pounds being applicable on Western Classification minimum weight basis, which is graduated up from 12,000 pounds, according to the length of the car used, and the other a commodity rate of 30 cents per 100 pounds on minimum of 20,000 pounds.

The rate from Louisville to East St. Louis is 12½ cents, which, added to the rate of 22½ cents beyond, makes a through rate to Missouri River points of 35 cents per 100 pounds, minimum weight 20,000 pounds.

A proportional rate of $12\frac{1}{2}$ cents also applies on furniture from Louisville to East St. Louis.

There is a proportional rate of 10 cents on straight carloads and 11 cents on mixed carloads of furniture from Evansville to East St. Louis, which, added to the rate of $22\frac{1}{2}$ cents beyond, results in through rates of $32\frac{1}{2}$ and $33\frac{1}{2}$ cents per 100 pounds on straight and mixed carloads, respectively, from Evansville to Missouri River points.

Defendants contend that these rates from Evansville were established to meet river competition and that when they became effective it was found necessary to readjust the rates from Louisville in order to maintain a relative adjustment as between Louisville and Evansville. Therefore the Southern Railway, the Illinois Central, and the Louisville, Henderson & St. Louis, all of which roads reach both Louisville and Evansville, established the proportional rate of $12\frac{1}{2}$ cents to apply on chairs and furniture from Louisville to East St. Louis. None of the roads applying this proportional rate from Louisville to East St. Louis are initial carriers from Indianapolis to the Mississippi River crossings. The Cleveland, Cincinnati, Chicago & St. Louis and the Pittsburg, Cincinnati, Chicago & St. Louis, which serve both Louisville and Indianapolis in this traffic, are not parties to that rate, which they contend is unremunerative. The advantage in favor of Louisville and Evansville is therefore a matter for which those carriers are not responsible and which does not afford a basis for a charge that they thereby unjustly discriminate against Indianapolis.

There is a considerable movement of furniture by river from Evansville and Tell City to East St. Louis, and while there has been no such movement from Louisville in recent years, such transportation is entirely practicable.

Commodity rates on the basis of 126 per cent of the 4th class rate of 14 cents per 100 pounds have long been in effect on furniture from Grand Rapids and other Michigan points to Chicago. Subsequent to the filing of the petition herein lines from Indianapolis established rates on furniture to Chicago on a relative basis with those applying from Grand Rapids, resulting in a reduction of the rate—Indianapolis to Missouri River points, from $54\frac{1}{2}$ to $47\frac{1}{2}$ cents per 100 pounds on a minimum of 20,000 pounds. The combination via Chicago produces a through rate of $53\frac{1}{2}$ cents per 100 pounds on a 12,000-pound minimum. This rate applying to Chicago from Indianapolis was adopted as a proportional on traffic moving via Peoria by lines which do not operate via Chicago, in order that they might participate in the traffic. This basis has not been established to apply via East St. Louis for the reason that unless restricted to apply via Chicago,

as were the rates from Michigan points, and via Peoria, as brought about by the competition of lines operating through that gateway, the rates from Michigan to East St. Louis would also have to be reduced to the same basis. The carriers contend that this would be necessary in the event the reduced rate from Indianapolis should be applied via East St. Louis for the reason that if the rates from Michigan points were restricted to apply only via Chicago, the rate from Chicago to Missouri River points being higher than from East St. Louis, the total rate from Michigan points based on Chicago would be in excess of the Indianapolis rate based on East St. Louis. It is also contended that the application of this basis via East St. Louis on Indianapolis shipments would bring about its application generally from Central Freight Association territory.

As stated, the rate on furniture from East St. Louis to Missouri River points is 22½ cents per 100 pounds. If, therefore, the rate made on the basis of 126 per cent of the fourth class rate of 14 cents per 100 pounds, Indianapolis to Chicago, were applicable via East St. Louis, a through rate of 40 cents per 100 pounds would be available on furniture from Indianapolis to Missouri River points.

A rate of 11½ cents per 100 pounds, minimum carload 20,000 pounds, is in effect on iron beds from both Indianapolis and Grand Rapids to Chicago. A lower combination rate, however, is applicable on this commodity from Indianapolis when handled via East St. Louis to Missouri River points, made up 13½ cents per 100 pounds to that crossing, plus 22½ cents beyond. A rate of 11½ cents, minimum carload 20,000 pounds, also applies on metal couch frames, folded flat; metal springs, compressed; metallic and woven wire mattresses; metallic cots and cribs, in mixed carloads, from Indianapolis to Chicago, and 13½ cents per 100 pounds to East St. Louis.

Identical rates apply under the Official Classification from Indianapolis and Grand Rapids to Chicago. These rates on the several classes, 1 to 6, inclusive, are, in cents per 100 pounds:

Class....	1	2	3	4	5	6
Rate	31½	27	21½	14	11½	9

From Indianapolis to East St. Louis the rates on the several classes are somewhat lower than from Grand Rapids, to wit:

Rates to East St. Louis.

From—	Class.					
	1	2	3	4	5	6
Indianapolis.....	Cents. 38	Cents. 32½	Cents. 24	Cents. 16½	Cents. 13½	Cents. 10½
Grand Rapids.....	45	39	30	21	18	14

These lower rates from Indianapolis to East St. Louis do not appear to have forced reductions in the rates from Grand Rapids.

The minimum rule applying from Chicago permits the use of 2 cars on the basis of the minimum applicable on one; that is, if a shipment can not be loaded into the first car a second car is provided and the carload rate applies on the entire shipment. The minimum prescribed by the Official Classification to apply from Indianapolis on a 36-foot car loaded with chairs is 10,000 pounds. It is contended by complainants that the actual loading capacity of this 36-foot car is 8,500 pounds. The 10,000 pound minimum, however, applies on each car used, so that on two 36-foot cars at the rate of 32½ cents per 100 pounds, Indianapolis to the Mississippi River, the charges would be \$65, and at 27 cents per 100 pounds, applicable on the actual weight of 17,000 pounds under the Western Classification on two 36-foot cars from the Mississippi River crossings to Missouri River points, the charge would be \$45.90, or a total charge, Indianapolis to Missouri River points, of \$110.90. On a similar shipment from Chicago to Missouri River points a through rate of 32 cents per 100 pounds is applicable on a minimum of 12,000 pounds, charges being assessed on actual weight of any excess, whether the shipment be loaded in one car or two, resulting in total charges of \$54.40 on 17,000 pounds. Thus, the charges on a shipment of chairs weighing 17,000 pounds are \$56.50 less from Chicago to Missouri River points than from Indianapolis. Of this difference \$9.60 results from the application of the so-called "two-for-one" rule at Chicago and its nonapplication on shipments from Indianapolis.

In *Indianapolis Freight Bureau v. Cleveland, Cincinnati, Chicago & St. Louis Ry. Co. et al.*, 15 I. C. C. Rep., 504, that rule was fully discussed. We therefore refrain from further discussion of it here, with the understanding that if it is not adjusted along reasonable lines further consideration will upon request be given to it.

The keenest competition experienced by the Indianapolis manufacturers in the sale of furniture and chairs in Missouri River territory comes from Chicago. St. Louis, Evansville, and Louisville manufacturers are also strong competitors in that territory. Complainants assert that the cheaper grades of these articles can not be sold by them in western territory, since the Indianapolis shipper can not afford to offset the advantages in freight rates enjoyed by other competitive points because of the small margin of profit on such grades. It has been seen, however, that defendants herein that serve Indianapolis are not responsible for the low rates from Louisville and Evansville, which are controlled by competitive rates on the river. It is not possible that Indianapolis shall have as low rates to the Missouri River as apply from Chicago or from St. Louis.

Rates applied under the classification are higher from St. Louis to Missouri River points on through traffic from Indianapolis than the rates charged up to the Mississippi River crossings—the rate to East St. Louis on first class being 38 cents and beyond 60 cents per 100 pounds, whereas on chairs the rate beyond East St. Louis applied on through shipments from Indianapolis is $22\frac{1}{2}$ cents and to East St. Louis $32\frac{1}{2}$ cents per 100 pounds. The lowest combination rate applicable on furniture from Indianapolis applies via Chicago, resulting in a through rate to Missouri River points of $47\frac{1}{2}$ cents.

In the absence of satisfactory explanation—and none is here given—it is not easy to understand why the rate on furniture and chairs from Indianapolis to East St. Louis should be 10 cents higher than the rate from East St. Louis to the Missouri River. No justification appears for so reversing the generally applied principle in making rates from Indianapolis to the Missouri River. Nothing but an arbitrary effort to maintain certain rates or conditions accounts for this $32\frac{1}{2}$ -cent rate on furniture from Indianapolis to the Missouri River, contemporaneously with class rates between the same points of 38, $32\frac{1}{2}$, 24, and $16\frac{1}{2}$ cents, respectively, on the first four classes, and a commodity rate on the same furniture of 126 per cent of the fourth class rate from Indianapolis to Chicago and Peoria, and while at the same time the competitive rates from Louisville and Evansville are ignored.

Of course, the low rate from East St. Louis to the Missouri River is attractive to Indianapolis manufacturers, and it is neither reasonable nor lawful to debar them from its advantages by an unreasonably high rate from Indianapolis. The distance from Indianapolis to East St. Louis is only about 30 miles greater than that from Indianapolis to Peoria.

We have found that it is reasonable to maintain class rates from Indianapolis to the Missouri River higher than from Chicago to the Missouri River. Those rates are made up from the combination on East St. Louis, and those portions of those rates applying east of the Mississippi River are thought to be reasonable in comparison with the portions applying west of that river. It is not possible to reach any such conclusion as to the portions of this furniture rate, which bear abnormal and unnatural relations to each other and which result in the use of a portion between Indianapolis and the Mississippi River which is manifestly unreasonable in and of itself, and relatively as compared with the same carriers' other rates between the same points and their rates on the same commodities between other points.

The enforced routing of furniture shipments via Chicago and Peoria in order to obtain the benefit of the $47\frac{1}{2}$ -cent rate from Indian-

apolis is not sanctioned under the law. The reason given for this is that were Indianapolis shipments permitted to move on this rate applied as a proportion of the Missouri River rate via East St. Louis, the parity now existing between rates from Grand Rapids and Indianapolis, respectively, would be disturbed. Indianapolis is less distant from the Missouri River points than Grand Rapids; the direct route is via East St. Louis, and there is no justification for requiring Indianapolis shippers to forward via circuitous routes to protect rates established by other initial carriers to apply from some farther distant point.

As previously noted, the present rate on furniture from Indianapolis to Chicago is 126 per cent of the fourth-class rate. The fourth class rate from Indianapolis to East St. Louis is 16½ cents. If 126 per cent of this rate were applied it would result in a rate of 21 cents, which, added to the 22½ cents west of East St. Louis would make 43½ cents through to the Missouri River, which, in our opinion, would be a reasonable rate based upon a minimum carload weight of 20,000 pounds.

In the view of the Commission the present rates applying from Indianapolis to East St. Louis on chairs and furniture, not otherwise specified, destined to Missouri River points are unreasonable and unjust to the extent that they exceed 21 cents per 100 pounds on a minimum carload of 20,000 pounds and 27 cents on a 12,000-pound minimum. By combination of these proportionals with the 22½-cent rate beyond East St. Louis a through rate will be available from Indianapolis on chairs and furniture destined to Missouri River points of 43½ cents per 100 pounds on a minimum carload weight of 20,000 pounds, and, assuming an adjustment of minimum weights or of the two-for-one rule, a rate of 49½ cents per 100 pounds on a minimum of 12,000 pounds.

The publication of a commodity rate takes the commodity upon which such rate applies out of the classification, so that all shipments of that commodity moving from and to points between which such commodity rate is in effect must be charged for on the basis of the commodity rate and carload minimum. However, if the alternative use of class or commodity rates is necessary or desired, it may be provided by including in different sections of the same tariff the class and commodity rates, and by including in each section the specific rule: "If the rates in section * * * of this tariff make a lower charge on any shipment than the rates in section * * * of this tariff, the rates in section * * * will be applied."

It would seem, in view of the peculiar character of furniture shipments, varying as they do in bulk and weight, and also in view of

the necessities of manufacturers and jobbers in supplying orders of varying sizes, that alternative minimum weights and cars of different capacities should be available. It would also seem proper that lower rates should be applied on higher carload minima. This, we think, can be secured by a proper tariff provision conforming to the rule above stated.

In stating our conclusions in this case we have not ignored the contention strongly urged by the defendants that an order reducing the Indianapolis rates will result in a general readjustment of the rates from other points in Central Freight Association territory and a consequent diminution of their revenues. That consideration has been constantly borne in mind in reaching a determination of the questions here involved. But however much weight may be attached to that and the other consideration as to the general effect of an order changing the rate structure for a typical point in a group, we can not under the law deny relief to such point for the sole reason that other points in like situation may be able to show that they are entitled to a similar order. We do not and can not know definitely to what extent, if any, the proposed changes in the rates from Indianapolis will effect a disturbance in a proper relationship between the rates obtaining generally in Central Freight Association territory. There may or may not now be a proper relationship between the rates from other points in that territory. However, any order which the Commission may enter must be predicated upon the complaint which is before it, after examination into the facts, circumstances, and conditions appertaining thereto. Any order made in this case must be limited to the Indianapolis situation under the petition filed in this case. If other points in Central Freight Association territory are properly entitled to relief and the same is not voluntarily accorded by the carriers proceedings specifically directed to the correction of any unjust rate, regulation, or practice to which they may now or may hereafter be subjected must be prosecuted in the manner prescribed by law to vest the Commission with authority to make any further order which might be found necessary after full investigation.

It is not to be understood that the findings and conclusions herein afford any basis for reparation on past shipments.

An order concerning the rates on chairs and furniture will be entered in accordance with the views here expressed.

The portions of the through class rates which are herein found to be unreasonable are the same rates that were found to be unreasonable in the *Burnham, Hanna, Munger case, supra*. That case is now before the court on review under restraining order. For that reason, in deference to that proceeding and awaiting the court's decision, we

will not at this time enter any order in this case concerning those class rates. The case will be held open for the later entry of such order as may be necessary or proper.

CLEMENTS, *Commissioner*, concurring:

I regard the question of discrimination between Indianapolis and Chicago as the principal question involved in this case. Being convinced that the present discrimination in rates in favor of Chicago and against Indianapolis, while justifiable in part, by reason of the differences in circumstances and conditions affecting the transportation from these two places respectively to Missouri River points, is unreasonable and unjust to a large extent, I therefore concur in this report. But I do not believe that the reductions or differentials suggested therein are sufficient to fully remove the unreasonableness and injustice existing in the present relationship of these rates.

PROUTY, *Commissioner*, dissenting:

I dissent from the conclusion as to class rates.

16 I. C. C. Rep.

No. 1527.

VALLEY FLOUR MILLS

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted January 21, 1909. Decided April 15, 1909.

In *Howard Mills Co. v. Missouri Pacific Ry. Co. et al.*, 12 I. C. C. Rep., 258, the difference between rates on wheat and on flour from Kansas points to Pacific Coast terminals was prescribed. That decision included the adjustment from Kansas points to Phoenix, Ariz., that question having been raised in the complaint and nothing in the line of testimony or information having been brought to the attention of the Commission indicating that any interests other than those of the parties to that proceeding were involved. It now appears that milling interests at Phoenix were unfavorably affected by that decision, and in this proceeding the relationship of rates on wheat and flour from Belpre, Pawnee Rock, and Hutchinson, Kans., to Phoenix, Ariz., is brought in issue; *Held*, That the rate on wheat from said Kansas points to Phoenix, Ariz., should not exceed \$1 per 100 pounds, and that the rate on flour from same points to same destination should not exceed the rate on wheat by more than 12 per cent. Order in *Howard Mills case* modified accordingly.

Rufus B. Daniel and *Emil Viault* for complainant.

A. A. Hurd, *Robert Dunlap*, and *T. J. Norton* for defendants.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

Complainant, a corporation, is engaged in the manufacture of flour at Phoenix, Ariz., and alleges that defendant carriers, subject to the act to regulate commerce, exact for the transportation of wheat in carloads from Belpre, Pawnee Rock, and Hutchinson, Kans., to Phoenix, Ariz., \$1.18 and for flour \$1.25, per 100 pounds, which rates are alleged to be unjust and unreasonable in and of themselves, and relatively as compared with rates on the same commodities from the same points of origin to Los Angeles, Cal., thereby unjustly discriminating against Phoenix to the advantage of Los Angeles.

It is asserted that a differential of one-third is the usual basis observed between wheat and flour, which is alleged to be just and reasonable.

Defendants admit the correctness of the rates named from Kansas points to Phoenix, deny the alleged differential basis, and allege that the present basis of rates in effect between said points is in accordance with the order of the Commission in *Howard Mills Co. v. M. P. Ry. Co. et al.*, 12 I. C. C. Rep., 258.

Complainant commenced to operate in June, 1905, and it is shown that from that time until September, 1907, it paid 86 cents per 100 pounds for the transportation of wheat from Belpre, Hutchinson, and Pawnee Rock to Phoenix, and that the rate on wheat was increased to \$1.18 per 100 pounds in accord with the order of the Commission in the *Howard Mills case, supra*. Mr. Viault, manager for complainants, testified that when that proceeding was pending he was unaware of it, and that otherwise he would have intervened therein in the interest of Phoenix.

Some 10,000,000 pounds of soft wheat are produced in the Salt River Valley, which is marketed at Phoenix, and it is desirable to bring in hard Kansas wheat to blend with it in order to produce satisfactory flour. One hundred pounds of wheat will produce about 66 pounds of flour, leaving about 34 pounds of by-products for which there is at times a ready sale at from \$1 to \$1.10 per 100 pounds. Complainant can not sell flour in Yuma, Prescott, Tucson, Casa Grande, Gila, and many other points in Arizona, owing to competition of California and Kansas millers. Under the present adjustment complainant can not sell at a profit 100 miles north or south of Phoenix. It is stated that if the present adjustment is continued it means not alone the closing of the mills at Phoenix, but that wheat raising in the Salt River Valley would cease. The baker will always choose the unblended Kansas flour, and therefore, even if the adjustment of rates sought is made, the Kansas flour will still sell in Phoenix at a higher price than the Phoenix flour. It is desired that the rate be so adjusted as to permit the Phoenix mills to successfully compete with Kansas millers on flour for consumption in Phoenix and its vicinity.

The cost of milling is greater in Phoenix than in Kansas. The mills in Kansas are larger, and the cost of operation decreases as the size of the mill increases. Fuel, labor, materials, and supplies are higher in Phoenix than in Kansas. Disregarding this feature as well as that of the sale of offal, bran, or shorts, on which the Kansas miller pays no freight, it is apparent that under the present rates it costs the complainant \$1.77 to bring from Kansas to Phoenix 150 pounds of wheat, which will produce 100 pounds of flour, whereas 100

pounds of flour can be shipped to Phoenix by the Kansas miller for \$1.25. Under the adjustment in effect prior to the order of the Commission in the *Howard Mills case* the figures would have been \$1.29 and \$1.35. If the differential basis were absolutely one-third, at a flour rate of \$1.35, the wheat rate would be 90 cents per 100 pounds, which would make the figures \$1.35 in each instance. It is in testimony that on current rates Kansas wheat can not be ground at Phoenix, but the Kansas flour necessary for blending is brought in.

The position of the defendants in this case is somewhat similar to that taken in the *Howard Mills case*; that is, they are willing to have the differential changed if that can be accomplished by increasing the rate on flour and decreasing the rate on wheat. It is contended by them that sufficient wheat to supply local demands is not now raised in the Salt River Valley; that any reduction in the rate on wheat from Kansas points to Phoenix would result in a reduction of the price which the producer in the Salt River Valley can obtain for his wheat; that while the differential should be increased, advancing the rate on flour to \$1.35 and reducing the rate on wheat to \$1.10 would give complainant adequate protection and would not prejudice the interests of the producers of wheat in that territory.

When the case of the *Howard Mills Company* was considered by the Commission it was not advised of the milling interests at Phoenix and the effect of its order on such mills was not therefore considered. The controversy was adjudicated on the basis of the conflicting interests of the California and Kansas millers.

Reference was made in the *Howard Mills case* to the Phoenix rates, as follows:

Complaint was made as to the relation of rates from Kansas to Phoenix, Ariz. It appears that the wheat rate is \$1, while the flour rate is \$1.35. No reason appears for making a larger differential to that point than is made to more distant Pacific coast points and our order will apply here as well as to California points.

The general freight agent of defendant, Santa Fe, Prescott & Phoenix Railway, testified that the reduction in the flour rate from \$1.35 to \$1.25 was not made for the purpose of complying with the order of the Commission, but was based on the combination on Los Angeles, the terminal rate of 65 cents per 100 pounds, plus the still effective rate of the Southern Pacific of 60 cents from Los Angeles to Phoenix. The rate of the Atchison is 80 cents. In fact the order in the *Howard Mills case* was effective August 20, 1907, and the rate on flour was reduced to \$1.25 July 15, 1907. Mr. Hastings also testified that the 86-cent rate on wheat from Kansas points to Phoenix was voluntary; that he assumed that it was reasonable; that the reason for the \$1.18 rate on wheat was the order of the Commission and that it was

rather high; in other words, leaving the order of the Commission out of consideration, he did not consider the \$1.18 rate on wheat just and reasonable. He also testified that he considered the \$1.25 rate on flour just and reasonable, and that the present differential between wheat and flour was too small.

In the *Howard Mills case* it was said:

From a consideration of these cases it is apparent that the Commission has always been of the opinion that there is no inflexible requirement that rates upon grain and the products of the grain should be, under all circumstances, the same, but rather that carriers may, in just regard for their own interest, or to meet special conditions, vary those rates within narrow limits. When once the relation has been established, when business has developed and money has been expended upon the strength of it, then the carrier can not, in the absence of some sufficient reason, change that relation; nor would this Commission direct a change.

In the present case the carriers are anxious to continue this differential. The differential itself has been long in effect, and industrial conditions have adapted themselves to it. It is plain that this Commission must hold, unless it is prepared to reverse its past policy, that not only may a differential between wheat and flour to California points be continued, but that it should be continued. The only question is upon the amount of that differential.

Does the record in this case demand that the Commission should modify its order in the *Howard Mills case*? We think it does; and the question is the amount of the differential.

As above indicated, unapprised of the situation at Phoenix and of the milling interests there, the Commission ordered in a differential which disturbed the existing relation of rates, and the action of the carriers in complying with that order caused a change which placed Phoenix in a situation in respect to flour and wheat rates unique and out of line with the adjustment of rates in contiguous territory to its prejudice and disadvantage. We shall not undertake to equalize commercial conditions nor to take from a locality or place advantages which on account of its location naturally belong to it; but, undoubtedly, the milling industries of Arizona have been built up on an adjustment of rates long established, and in respect to Phoenix the order of the Commission has dissarranged the situation. If Phoenix had been represented in the *Howard Mills case* and all the facts now before us had then been made known the conclusion as to rates to Phoenix would have been different.

In *Kauffman Milling Co. v. M. P. Ry. Co. et al.*, 4 I. C. C. Rep., 417, the Commission held that on the facts in that case, where the rates were 51 cents on flour and 46 cents on wheat, the flour rate should not exceed the wheat rate by more than 5 cents.

In the *Howard Mills case* it was held that the rates on flour from Kansas points to California points should not exceed the rates on wheat between the same points by more than 7 cents per 100 pounds. A review of former cases in which the relationship between rates on wheat and on flour have been considered indicates that the differential allowed in the *Howard Mills case* is the highest as yet sanctioned by this Commission.

The present rate on flour from the Kansas points mentioned to Los Angeles is 65 cents per 100 pounds, and on wheat it is 58 cents per 100 pounds. The combination on Los Angeles from the Kansas points to Phoenix is \$1.25 per 100 pounds on flour and 98.5 cents on wheat, as against the direct rates from the Kansas points to Phoenix of \$1.25 on flour and \$1.18 on wheat.

Rates on flour and wheat, in cents, per 100 pounds.

From—	To Williams, Ash Fork, and Kingman, Ariz., and Needles, Cal., December 15, 1905, to October 4, 1907, inclusive.		To Williams, Ash Fork, and Kingman, Ariz., and Needles, Cal., October 5, 1907, to present date.		To Tucson, Maricopa, and Yuma, Ariz., December 12, 1906, to present date.	
	Flour.	Wheat.	Flour.	Wheat.	Flour.	Wheat.
	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
Belpre, Kans.....	115	80	115	108	112	85
Pawnee Rock, Kans.....	115	80	115	108	112	85
Hutchinson, Kans.....	120	85	120	113	116	87½

If complainant's prayer were granted and the rates on wheat were fixed at two-thirds of the rates on flour it is obvious that the Phoenix millers would have a monopoly of their locality, because the difference in rates would make it impossible for outside flour to be shipped in. On the other hand, if the differential is too narrow the outside millers could destroy the business of the Phoenix millers and of the wheat growers in that vicinity. Phoenix is peculiarly situated as a sort of an oasis in a desert. It is far from the wheat fields of Kansas or of California. It seeks to compete with the Kansas and California millers only in a limited local area. Its rates on both wheat and flour from the Kansas points are higher than generally obtain to Arizona points, and the difference between the wheat and flour rates is narrower than at some Arizona points. Its rate on flour from the Kansas points is equal to the combination on Los Angeles, while its rate on wheat exceeds the Los Angeles combination by 19.5 cents. The Phoenix miller can, therefore, under the present adjustment of rates ship the Kansas wheat to Los Angeles and back from Los Angeles to Phoenix 19.5 cents per 100 pounds cheaper than he can ship it direct to Phoenix.

A carrier may make low rates to certain points for the purpose of meeting water competition at those points, and may make somewhat higher rates to intermediate points at which the same competition does not exist, but obviously its higher rate to such intermediate point can not reasonably exceed its rate to the competitive point, plus its local rate back from that point to the intermediate point. We are not to be understood as saying that the full combination is reasonable and warranted in such cases. Manifestly a rate from the Kansas points to Phoenix which exceeded the Los Angeles combination would be unreasonable. We find that the rates on wheat, in carloads, from Belpre, Pawnee Rock, and Hutchinson, Kans., to Phoenix, Ariz., should not exceed \$1 per 100 pounds.

The difference between rates on wheat and on flour from the Kansas points to Los Angeles is the 7 cents prescribed in the *Howard Mills case*. The same difference now obtains at Phoenix on direct shipments. The local rate on flour from Los Angeles to Phoenix is 60 cents per 100 pounds, and on wheat it is 40.5 cents per 100 pounds, which adjustment tends to support complainant's contention that in that territory the wheat rates are customarily two-thirds of the flour rates. The circumstances and conditions are different at a milling point from those at a point where no milling is done, and this may account, in some measure at least, for the difference in the rates from the Kansas points to Arizona points. To reduce the wheat rate to Phoenix to the present Los Angeles combination and maintain the present rate on flour would shut out all competition in flour at Phoenix.

We are satisfied that the decision in the *Howard Mills case* was and is right as between the interests then before us, to wit, the Kansas and California millers. Great quantities of wheat are grown and great quantities of flour are milled in both Kansas and California. Limited quantities of wheat are grown in the vicinity of Phoenix and are milled at Phoenix. Both the California miller and the Phoenix miller wish some Kansas wheat for blending purposes. The Kansas miller contends for his right to mill the Kansas wheat and to sell Kansas flour. The carriers may not by any arbitrary or unreasonable adjustment of rates dictate or determine where the wheat shall be milled or where the flour shall be marketed.

The decision in the *Howard Mills case* authorized a rate on flour 12 per cent higher than on wheat. We see no reason to now assume that if Phoenix interests had been represented in that case, as the California interests were, we should have applied to Phoenix any different principle. Applying that principle, we find that, having fixed the maximum rate on wheat from Belpre, Pawnee Rock, and Hutchinson, Kans., to Phoenix, Ariz., at \$1 per 100 pounds, the

rate on flour from the same points to Phoenix should not exceed \$1.12 per 100 pounds, and that the rate on flour from the points named to Phoenix should not for the future exceed the rate on wheat by more than 12 per cent.

In this case, as in the *Howard Mills case*, the main question is the relationship between the rates on wheat and on flour. In this case the establishment of proper relationship involves certain reductions in rates which were increased under the decision in the *Howard Mills case*. It is not believed that the adjustment now made affords a basis for reparation.

In *August J. Bulte Milling Co. et al. v. C. & A. R. R. Co. et al.*, 15 I. C. C. Rep., 351, we have indicated the view that in the territory east of the Missouri River and north of the Ohio River, where wheat is grown in vast quantities, where milling is done in a great number of places, and where there is a great density of population and of traffic, there should be substantial parity between rates on wheat and on flour. That view is adhered to, and any apparent difference between that view and any expressed herein is attributable to and accounted for by the vast difference in circumstances and conditions between Arizona and the territory east of the Missouri and north of the Ohio rivers.

An order will be entered in accordance with the conclusions herein expressed.

16 I. C. C. Rep.

No. 1744.

WISCONSIN PEARL BUTTON COMPANY

v.

CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY
COMPANY ET AL.

Submitted February 2, 1909. Decided April 5, 1909.

Complainant questioned the reasonableness of the Class B rate of 20 cents per 100 pounds on a carload shipment of clam shells from Mendota, Minn., to La Crosse, Wis.; *Held*, That, upon the facts disclosed in the record, the rate charged was excessive and unreasonable and that a rate of 8 cents per 100 pounds for such transportation would have been a reasonable and lawful rate. Reparation awarded.

Leonard Brisley for complainant.

Thomas Wilson for Chicago, St. Paul, Minneapolis & Omaha Railway Company.

H. C. Cheyney for Chicago & Northwestern Railway Company.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

The question here is of the reasonableness of the Class B rate of 20 cents per 100 pounds on carload shipments of clam shells from Mendota, in the state of Minnesota, to La Crosse, in the state of Wisconsin. The carload involved in this complaint, weighing 91,300 pounds, was shipped on September 20, 1906, and the freight charges amounting to \$182.60, based on the rate of which complaint is made, were paid by the complainant on October 24 of the same year. The petition was filed with the Commission on September 22, 1908.

In support of its allegation that the rate is unreasonable the complainant showed (a) that the defendants at the time in question maintained a northbound rate of 6 cents per 100 pounds on clam shells from La Crosse to St. Paul, a haul of about the same length as the haul from Mendota to La Crosse; (b) that soon after the movement the classification of the commodity in question was changed from Class B to Class E, thus giving clam shells a rate of 10.6 cents per 100 pounds between the points in question when shipped through St. Paul; and (c) that the Chicago, Milwaukee & St. Paul Railway voluntarily established a rate of 8 cents per 100 pounds on clam shells between the points in question which became effective on October 17, 1906. Applying these rates as tests it is urged that

the rate collected was unreasonable, and reparation is demanded on the basis of 8 cents, which it is alleged would have been a reasonable rate for the movement.

Mendota is 6 miles south of St. Paul, and is served by the Chicago, Milwaukee & St. Paul, and also by the Chicago, St. Paul, Minneapolis & Omaha roads. A movement to La Crosse over the lines of the defendants involves a haul of some 230 miles. Over the lines of the Chicago, Milwaukee & St. Paul the haul is one of 133 to 206 miles in length, depending on the junction used.

The rate situation is not satisfactorily disclosed on the record, but our own investigation shows the following facts: At the time in question the Class B rate of 20 cents was in effect from St. Paul to Chicago, but although that rate seems to have been applied and on that basis charges were collected, the tariff did not authorize its application upon a shipment between Mendota and La Crosse. At the time the shipment moved a combination of local class rates in effect on the lines of the defendants based on St. Paul and moving through Elroy yielded a through rate of 18 cents per 100 pounds from Mendota to La Crosse; and at that time there also seems to have been in effect a combination of class rates, via the route shipment moved and based on Kasota, of 24 cents per 100 pounds; the present Class E combination based on Kasota seems to be 11.9 cents per 100 pounds. But the rate adjustment then existing is far from satisfactory and is not wholly free from doubt and obscurity.

It appears, however, that the principal defendant made effective on February 18, 1907, a southbound commodity rate on clam shells of 8 cents per 100 pounds from St. Paul to La Crosse. This tariff also carried a northbound rate of 6 cents per 100 pounds from La Crosse to St. Paul. On May 17, 1907, the southbound rate was canceled, but the northbound rate was not affected by the supplement then filed and is in effect at this time. The combination of the local class rates of the defendants, based on St. Paul and through Elroy, now makes a through rate of 9.9 cents per 100 pounds. On October 17, 1906, the Chicago, Milwaukee & St. Paul published a commodity rate of 8 cents from Mendota to La Crosse, which remained in effect until November 18, 1908, when its present Class E rate of 7.3 cents became effective.

On these facts we find that the rate charged was excessive and unreasonable and that a rate of 8 cents per 100 pounds for the transportation of clam shells in carloads between Mendota, Minn., and La Crosse, Wis., would have been a reasonable and lawful rate at that time as well as for the future. On that basis the complainant is entitled to reparation in the sum of \$109.56 with interest.

An order will be entered in accordance with these conclusions.

No. 1700.
DAYTON CHAMBER OF COMMERCE
v.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COM-
PANY ET AL.

Submitted March 18, 1909. Decided April 5, 1909.

The through class rate of 33½ cents per 100 pounds formerly applied by defendants on carload shipments of non-edible grease from Austin, Minn., to Dayton, Ohio, found unreasonable, and reparation awarded on the basis of a reasonable through commodity rate of 25 cents per 100 pounds.

Walter B. Moore for complainant.

William Ellis for Chicago, Milwaukee & St. Paul Railway Company.

J. J. Brooks for Pittsburg, Cincinnati, Chicago & St. Louis Railway Company.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

This proceeding was instituted by the complainant in its capacity as a general representative of the merchants of Dayton in matters of transportation and other matters affecting their commercial welfare. The complaint was filed in the interest of the J. P. Davies Company, which was the consignee of the shipment in question, and it prays for reparation on behalf of that company upon a shipment of 75 barrels of non-edible grease, a by-product of the packing-house industry. The shipment, which aggregated 33,457 pounds in weight, was made on June 6, 1907, from Austin, in the state of Minnesota, and was consigned to the Davies Company at Dayton, in the state of Ohio. There was no commodity rate on non-edible grease in carloads then in effect between those points, and the charges were consequently collected on the basis of a through class rate of 33½ cents per 100 pounds. It is this rate that is alleged to be unreasonable, and the ground upon which the complaint is based is that the

through class rate was in excess of the sum of the local commodity rates then in effect into and out of Chicago, which, as stated in the record, made a through charge of 24.6 cents per 100 pounds. Reparation is demanded on that basis in the sum of \$29.78.

The defendant, the Pittsburg, Cincinnati, Chicago & St. Louis Railway Company, filed no answer, but has indicated its willingness to accept any adjustment that is satisfactory to the other defendant, the Chicago, Milwaukee & St. Paul Railway Company. The latter company in its answer admits that the fifth class carload rate of 33½ cents actually collected on the shipment was excessive. It also avers that since the date of the shipment in question a through commodity rate of 25 cents per 100 pounds has been established between the points in question. On this basis it is willing to make reparation.

Statements are made in the record on both sides as to rates now in effect and in effect at the date of the movement, which we have not been able to verify upon an examination of our own tariff files. The combination rate of 24.6 cents per 100 pounds, which the complainant and principal defendant both assert was in effect at the time the shipment was made, appears to have been made up of a rate of 14.6 cents per 100 pounds from Austin to Chicago and a rate of 10 cents per 100 pounds from Chicago to Cincinnati, applied as a maximum rate to Dayton, although there was then in effect a specific class rate from Chicago to Dayton of 14.5 cents per 100 pounds. If the latter rate be used, and we are inclined to think that it ought properly to be used in ascertaining what would have been the legal combination of local rates from Austin to Dayton at the time in question, the sum of the locals would have made a through charge of 29.1 cents per 100 pounds instead of the through rate of 24.6 cents per 100 pounds, as stated in the record.

It is also stated by the complainant and insisted upon by the principal defendant that there is now in effect a joint through commodity rate between the points in question of 25 cents per 100 pounds. We have not been able to verify this rate. We find such a rate in the tariffs of the defendants applicable on packing-house products, and non-edible grease is to be regarded as a packing-house product. But the same tariff that names a joint through rate of 25 cents on general packing-house products specifically notes a joint through rate of 29.1 cents on grease in carloads, which, in the absence of further explanation, we would understand to include non-edible grease. In other words, it had been our understanding that the present rate on that commodity between the points in question was 29.1 cents per 100 pounds.

But as the principal defendant has expressed its willingness to make reparation to the complainant on the basis of a rate of 25 cents

per 100 pounds and insists that such a joint through rate is now in effect, it is to be inferred that it is now applying that rate on shipments of non-edible grease between the points in question. We shall therefore accept that rate as the basis for adjusting the complaint and look to the defendants to remove the doubt from their tariffs by proper amendment. We accordingly find that the class rate of 33½ cents per 100 pounds applied on the complainant's shipment was excessive and unreasonable and ought not to have exceeded a rate of 25 cents per 100 pounds, which rate we also find will be a reasonable rate for the future on a carload minimum weight of 26,000 pounds. On this basis the complainant is entitled to reparation in the sum of \$28.44, with interest.

It will be so ordered.

16 I. C. C. Rep.

No. 1325.

RAILROAD COMMISSION OF WISCONSIN

v.

CHICAGO & NORTHWESTERN RAILWAY COMPANY.

No. 1326.

SAME

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.

Submitted January 27, 1909. Decided April 15, 1909.

Defendants' present rates for the transportation of cheese from the various stations in the state of Wisconsin, named in the report herein, to Chicago, Ill., found unreasonable, and reasonable maximum rates prescribed for the future.

B. H. Meyer, Halford Erickson, John H. Roemer, and John Luch-singer for complainants.

S. A. Lynde for Chicago & Northwestern Railway Company.

William Ellis for Chicago, Milwaukee & St. Paul Railway Com-pany.

REPORT OF THE COMMISSION.

COCKRELL, Commissioner:

The complaints here are made by the railroad commission of Wisconsin and are signed by the three members of that body. By stipulation of all the parties concerned the two proceedings were heard together, and may be decided as one.

The defendants are, as to the rates mentioned in the complaint, interstate carriers by rail, subject to the act to regulate commerce.

The complaints are brought to secure a reduction in the rates maintained by the two carriers above named for the transportation of cheese from various stations in the state of Wisconsin to Chicago, in the state of Illinois. The complaints are directed against both

the carload and the less than carload rates. The rates of the Chicago & Northwestern Railway Company involved are as follows:

Rates on cheese, in cents per 100 pounds, to Chicago, Ill., in effect September 20, 1907, as shown in C. & N. W. tariff G. F. D. No. 8360, I. C. C. No. 5986, effective November 12, 1906. (Now contained in C. & N. W. tariff I. C. C. No. 6778.)

To Chicago from—	Rate per 100 pounds.	
	Carloads (minimum 20,000 pounds).	Less than carloads.
	Cents.	Cents.
Beloit.....	17.5	28
Afton.....	17.5	28
Janesville.....	17.5	28
Hanover.....	20	28
Footville.....	22.5	30.08
Magnolia.....	22.5	30.08
Leydon.....	20.5	30.08
Fellows.....	20.5	30.08
Evansville.....	22.5	30.08
Brooklyn.....	22.5	31
Oregon.....	22.5	33
Syene.....	22.5	32.5
Madison.....	22.5	32.5
Verona.....	22.5	34
Rileys.....	22.5	34
Klevenville.....	22.5	34
Mount Horeb.....	22.5	34
Barneveld.....	22.5	34
Blue Mounds.....	22.5	34
Ridgeway.....	22.5	34
Dodgeville.....	22.5	34
Edmund.....	22.5	38
Cobb.....	27.5	38
Montfort.....	27.5	39
Preston.....	27.5	39
Lancaster Junction ^a		39
Stitzer.....	27.5	39
Liberty ^a		39
Lancaster.....	27.5	39
Fennimore.....	27.5	40
Werley.....	27.5	41
Anderson's Mills ^a		42
Woodman.....	27.5	42
Livingston.....	27.5	39
Rewey.....	27.5	39
Leslie.....	27.5	39
Mineral Point Crossing.....	27.5	39
Ipswich.....	27.5	39
Platteville.....	27.5	39
Elmo.....	27.5	39
Cuba City.....	27.5	39
Benton.....	27.5	39
Strawbridge.....	27.5	39
Buncombe.....	27.5	39

The rates of the Chicago, Milwaukee & St. Paul Railway Company involved are as follows:

Rates on cheese in cents per 100 pounds to Chicago, Ill., in effect September 20, 1907, as shown in C., M. & St. P. tariff G. F. D. No. 918-C, I. C. C. No. A-9702, effective November 12, 1906. (Now contained in C., M. & St. P. tariff I. C. C. No. B-972.)

To Chicago from—	Rate per 100 pounds.	
	Carloads (minimum 20,000 pounds).	Less than carloads.
	Cents.	Cents.
Janesville	17.5	28
Hanover	20	28
Orfordville	22.5	28
Brodhead	22.5	28
Albany	22.5	28
Monticello	22.5	28
New Glarus	22.5	31
Juda	22.5	28
Monroe	22.5	28
Browntown	22.5	28
Dill	22.5	28
South Wayne	22.5	28
Dunbarton	25	30
Shullsburg	27.5	32
Darlington	22.5	32
Calamine	22.5	34
Mineral Point	22.5	34
Belmont	27.5	38
Platteville	27.5	39
Beloit	17.5	28
Milton Junction	17.5	29
Edgerton	22.5	31
Stoughton	22.5	32
McFarland	22.5	33.5
Madison	22.5	33.5
Middleton	22.5	35
Cross Plains	22.5	35
Black Earth	22.5	35
Mazomanie	22.5	35
Sauk City	22.5	40
Prairie du Sac	22.5	40
Arena	22.5	35
Spring Green	22.5	38
Lone Rock	22.5	40
Gotham	27.5	42
Twin Bluffs	27.5	42
Richland Center	27.5	42
Avoca	25	40
Muscoda	27.5	40
Blue River	27.5	40
Boscobel	27.5	41
Wauzeka	27.5	42
Bridgeport	27.5	42

All the points named in the two lists above given are in the state of Wisconsin and in the same general shipping territory. Competitive conditions and other matters governing transportation and rates are practically uniform throughout this territory. There is, therefore, no necessity to consider the conditions of the shipments from each point separately. The complaints and answers were framed and the hearing held on the theory that the rates above set forth are to be sustained or condemned as a unit.

Only since 1899 have rates been made on the basis of carload and less than carload. Prior to that time the charges were the same upon all shipments regardless of quantity. In the change to the car-

load rate basis in 1899, cheese rates from southwestern Wisconsin were increased about 50 per cent on less than carload shipments, and about 12½ per cent on carload shipments. In 1902 the less than carload rates were somewhat reduced, the reduction being about one-third of the former increase. The net result was that points which prior to 1899 enjoyed a rate of 20 cents to Chicago on all shipments had after 1902 a rate of 22½ cents on carload shipments and a rate of 28 cents on less than carload shipments. These latter rates have continued to this date and are the ones here under examination.

As a cheese-producing state Wisconsin stands second, the tonnage produced being exceeded only by that of the state of New York.

The rates here considered are all from points in the southwestern part of the state of Wisconsin. The cheese produced in this section is of the Swiss, Limburger, and brick varieties. The tonnage of cheese from this section for the year 1907 was about 38,400,900 pounds of a value of \$4,347,233. This section of the state of Wisconsin produces annually more cheese than any state outside of Wisconsin except New York. The tonnage is therefore dense, and this should be taken into account when fixing the rate.

The evidence shows that there are special features of cost and expense attached to the handling of cheese. About 75 per cent of the cheese shipped from the territory here considered moves in less than carload lots. These less than carload shipments are handled in special refrigerator cars and are iced at the carrier's expense. Special cars must be furnished for this particular traffic, as the cheese would by its odor contaminate butter and most other varieties of perishable freight. These refrigerator cars run on regular schedules, the tonnage being of such importance that opportunity is afforded to shippers to reach the market with less than carload lots at regular intervals. The carload shipments, comprising about 25 per cent of the tonnage of cheese from this section, are iced at shipper's expense.

The complaints here follow a proceeding before the railroad commission of Wisconsin in which the Southwestern Wisconsin Cheesemen's Protective Association was complainant, and the carriers here involved with the Illinois Central Railroad Company were defendants. In this last-mentioned proceeding the shippers sought an order reducing the rates upon shipments to Milwaukee and also to Chicago. As a result of that proceeding, the Wisconsin commission determined that the rates from the point of origin mentioned in the complaints here to Milwaukee, Wis., should be somewhat lowered.

In its opinion the Wisconsin commission said:

This commission, as is well known, has no jurisdiction over interstate rates. The rates on cheese to Chicago are more important to producers in complainant's territory

than the rate to Milwaukee. It is a well-established custom on the part of the carriers to charge the same rate from the various points in complainant's territory to Chicago that are charged to Milwaukee. The foregoing schedule was constructed with this in view, and we recommend that the defendant carriers apply the Milwaukee rates also to Chicago.

The defendant carriers published without resistance the prescribed rates to Milwaukee, but declined to follow the suggestion of the Wisconsin commission that the same rates should be applied to Chicago. The Wisconsin commission thereupon brought these proceedings to secure an order which should make the interstate rates to Chicago the same in amount as the now effective state rates to Milwaukee.

The railroad commission of Wisconsin has exclusive jurisdiction over all rates intrastate to Wisconsin, but no jurisdiction over interstate rates. The Interstate Commerce Commission has no jurisdiction over purely intrastate rates, but has exclusive jurisdiction over interstate rates, and is necessarily not bound to follow the decisions of state commissions. This Commission will, however, always give all due and respectful consideration to such decisions.

Prior to the order of the Wisconsin commission, rates from this territory to Milwaukee and to Chicago were equal. It is the general rate-making policy of this territory that rates to these two cities shall be equal.

Elaborate tables of rates and distances for the carriage of cheese between various points throughout the United States have been filed in these proceedings. Many of these rates are for the carriage of cheese from other districts to the city of Chicago, and practically all of them may be said to be for shippers competing with the shippers in southwestern Wisconsin in the markets at Chicago and at points east of Chicago. A few of the rate comparisons, in cents per 100 pounds, made by these tables are as follows:

To Chicago from—	Dis- tance.	Rate per 100 pounds.		
		Carloads.	Less than carloads.	Any quantity.
	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Beloit, Wis., via C. & N. W. Ry.....	91	17.5	28	.....
Benton Harbor, Mich., via P. M. Ry.....	92	.....	.....	17
Janesville, Wis., via C., M. & St. P. Ry.....	99	17.5	28	.....
Coloma, Mich., via P. M. Ry.....	101	.....	.....	19.5
Delphi, Ind., via C., I. & L. Ry.....	111	.....	.....	19.5
Ridgeway, Wis., via C. & N. W. Ry.....	165	22.5	34	.....
Hudsonville, Mich., via P. M. Ry.....	166	.....	.....	21.5
Darlington, Wis., via C., M. & St. P. Ry.....	165	22.5	32	.....
Carpentersville, Ind., via C., I. & L. Ry.....	165	.....	.....	21.5
Woodman, Wis., via C. & N. W. Ry.....	219	27.5	42	.....
Holton, Mich., via P. M. Ry.....	204	.....	.....	25
Wauzeka, Wis., via C., M. & St. P. Ry.....	222	27.5	42	.....
Bloomington, Ind., via C., I. & L. Ry.....	220	.....	.....	23.5

The correctness of the tables of rates submitted by complainants is not disputed by the defendants. From these tables it fully appears that rates upon cheese from points in southwestern Wisconsin to Chicago are from 11 to 61 per cent higher than the rates upon the same commodity to Chicago from points in Indiana equally distant, and from 7 to 56 per cent higher than the rates to Chicago from Michigan points equally distant. In the same manner it appears that the rates from southwestern Wisconsin to Chicago are higher than the rates from Chicago to equally distant points in other states, and also higher than the rates for hauls of equal length between points in Ohio and Indiana, Ohio and Michigan, New York and Pennsylvania, and eastern Wisconsin to Chicago. The excesses in the southwestern Wisconsin rates shown by these comparisons are from 6 per cent to more than 80 per cent. Yet the cheese tonnage from southwestern Wisconsin is extraordinarily dense, which, all other elements being equal, should cause the rates to be lower. From a study of all the evidence we are convinced upon the whole that the rates here attacked are excessive in amount and should be reduced as hereinafter indicated. It remains to consider the one defense made by the carriers.

The carriers here considered have a rate-making policy which provides what are known as concentration rates for the transportation of cheese in less than carload lots from the various points of production to the central shipping points. The system contemplates the gathering of cheese at towns centrally located with reference to the cheese producing and marketing areas. At such concentration points large quantities of cheese are stored in warehouses to be sold and shipped at the proper turn of the market. Ample warehouses and refrigerator facilities have been provided at numerous Wisconsin towns. Because these concentration rates are extremely low, the carriers contend that the interstate rates for the transportation of cheese from the concentration points should be left somewhat higher than would otherwise be allowable. The concentration rates are purely intrastate rates. They are not subject to the jurisdiction of this Commission. The Commission could not order them to be retained for a single day if it should be determined by the carriers that they should be canceled. Moreover, by increasing the size and regularity of the interstate shipments, they seem to be to the advantage of the carriers as well as of the shippers.

Even more to the point, it appears that only one-fourth of the shipments from these points are ever moved upon the concentration rates. It is a strange argument that asks us to leave high rates upon all interstate shipments because one-fourth of them have previously moved upon a low state rate when making a state journey. Under all the circumstances, it is clear that the concessions given in the

intrastate concentration rates do not justify the present interstate rates to Chicago. While they are to the advantage of the cheese shippers, they are not at all competitive with the rates here mentioned, and, therefore, it can not be said that one rate compels the establishment of the other. Interstate rates must be reasonable in and of themselves.

After full consideration of all the facts in these cases the Commission concludes that the rates and charges demanded by the Chicago & Northwestern Railway Company (defendant in case No. 1325) for the carriage of cheese to Chicago from the points on its line above named are unjust and unreasonable. It determines and prescribes that the just and reasonable rates and charges in cents per 100 pounds to be hereafter observed as maxima by this carrier for this transportation will be as follows:

Rates on cheese prescribed via C. & N. W. Ry.

To Chicago from—	Rate per 100 pounds.	
	Carloads.	Less than carloads.
	Cents.	Cents.
Beloit.....	17½	25
Afton.....	17½	25
Janesville.....	17½	25
Hanover.....	19	25
Footville.....	19	26
Magnolia.....	19	26
Leydon.....	19	26
Fellows.....	19	26
Evansville.....	19	26
Brooklyn.....	19	26
Oregon.....	19	26
Syene.....	19	26
Madison.....	19	26
Verona.....	20	28
Rileys.....	20	28
Klevenville.....	20	29
Mount Horeb.....	20	29
Blue Mounds.....	20	29
Barneveld.....	21	31
Ridgeway.....	21	31
Dodgeville.....	21	31
Edmund.....	22	32
Cobb.....	22	32
Montfort.....	22	32
Preston.....	24	34
Lancaster Junction.....	24	34
Sitzer.....	24	34
Liberty.....	24	34
Lancaster.....	24	34
Fennimore.....	24	34
Werley.....	24	34
Anderson's Mills.....	24	34
Woodman.....	24	34
Livingston.....	22	32
Rewey.....	22	32
Leslie.....	22	32
Mineral Point Crossing.....	22	32
Ipswich.....	22	32
Platteville.....	22	32
Elmo.....	24	34
Cuba City.....	24	34
Benton.....	24	34
Strawbridge.....	24	34
Buncombe.....	24	34

Likewise, the Commission concludes that the rates and charges demanded by the Chicago, Milwaukee & St. Paul Railway Company (defendant in case No. 1326) for the carriage of cheese to Chicago from the points on its line above named are unjust and unreasonable. It determines and prescribes that the just and reasonable rates and charges in cents per 100 pounds to be hereafter observed as maxima by this carrier for this transportation will be as follows:

Rates on cheese prescribed via C., M. & St. P. Ry.

To Chicago from—	Rate per 100 pounds.	
	Carloads.	Less than carloads.
	Cents.	Cents.
Janesville.....	17½	25
Hanover.....	19	25
Orfordville.....	19	25
Brodhead.....	19	25
Albany.....	19	25
Monticello.....	19	25
New Glarus.....	19	27
Juda.....	19	25
Monroe.....	19	25
Browntown.....	19	28
Dill.....	19	28
South Wayne.....	19	28
Dunbarton.....	20	30
Shullsburg.....	20	30
Darlington.....	19	29
Calamine.....	20	30
Mineral Point.....	20	30
Belmont.....	22	32
Platteville.....	22	32
Beloit.....	17½	25
Milton Junction.....	17½	25
Edgerton.....	19	26
Stoughton.....	19	26
McFarland.....	19	26
Madison.....	19	26
Middleton.....	20	28
Cross Plains.....	20	28
Black Earth.....	20	29
Mazomanie.....	20	29
Sauk City.....	21	30
Prairie du Sac.....	21	30
Arena.....	21	31
Spring Green.....	21	31
Lone Rock.....	21	31
Gotham.....	22	32
Twin Bluffs.....	22	32
Richland Center.....	22	32
Avoca.....	22	32
Muscoda.....	22	33
Blue River.....	24	34
Boscobel.....	24	34
Wauzeka.....	24	34
Bridgeport.....	26	36

In these cases no reparation was claimed, and the Commission does not consider that any should be awarded.

An order will be entered in accordance herewith.

No. 1610.
BEDINGFIELD & COMPANY
v.
WISCONSIN CENTRAL RAILWAY COMPANY ET AL.

Decided April 13, 1909.

Complaint of excessive charges on a mixed carload shipment of mineral water and ginger ale from Waukesha, Wis., to Macon, Ga., dismissed for want of prosecution.

No appearance for complainant.

Thos. H. Gill for Wisconsin Central Railway Company.

Geo. W. Kretzinger for Chicago, Indianapolis & Louisville Railway Company.

C. B. Northrop and *Robert C. Alston* for Southern Railway Company.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

A carload quantity of mineral water and ginger ale was shipped from Waukesha, in the state of Wisconsin, on November 6, 1907, consigned to Bedingfield & Company, the complainant herein, at Macon, in the state of Georgia. There were no through rates on these commodities and the proportional rates that were applied north of the Ohio River are not attacked as unreasonable. But the through charges collected on the shipment are complained of as excessive, and reparation is prayed for, on the ground that the Class E rate of 50 cents per 100 pounds which then applied on mixed carload shipments from the Ohio River to Macon was unreasonable. The complainant demands the benefit of the carload commodity rate of 32 cents per 100 pounds published by the principal defendant, the Southern Railway Company, on mineral water from the Ohio River to Macon and which apparently was applied also on ginger ale, although that was not specifically provided for in the commodity tariff. The 32-cent rate did not at that time apply on mixed shipments of those commodities, but was subsequently made to apply by a tariff published in September, 1908.

At the time the complaint was filed the complainant was engaged in business at Macon, Ga., but it subsequently removed its principal office to Jacksonville, Fla. The Commission set the matter for hearing at Jacksonville, to suit the convenience of the complainant, and due notice of the assignment was given to the parties. Counsel for the principal defendant was present at the hearing, but no representative of the complainant appeared, nor has any word since been received from the complainant in regard to the case. The complaint therefore stands for dismissal for want of prosecution, and an order to that effect will be entered.

16 I. C. C. Rep.

No. 1492.

ARKANSAS FUEL COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.

Submitted June 18, 1908. Decided April 5, 1909.

1. The act to regulate commerce as amended not only gives a remedy against excessive and unreasonable rates as applied to shipments to be made in the future, but also affords the shipper a means of recovering excessive charges on shipments made by him in the past under rates that were unjust and unreasonable.
2. In dealing with shippers the carrier is required to conform the freight charges actually collected to the amount fixed in its published tariffs, and in that sense the published rate in effect at the time of the movement is the legal rate; but the law declares that every charge for services rendered by a carrier in the transportation of passengers or property shall be reasonable and just, and if a carrier promulgates a rate in violation of this injunction it is not a lawful rate when its reasonableness is subsequently questioned upon complaint filed. While the published rate is the legal rate, the mere publication can not make a rate lawful that is unreasonable and excessive. No rate can be lawful, in the sense of being immune from attack, either with respect to past or future shipments, if it be excessive and unreasonable in amount.
3. Complainant shipped from Kansas City, Mo., to Seymour, Iowa, via defendant's railway, a carload of hay upon which it was compelled to pay a class rate of 13½ cents per 100 pounds. This was 1 cent higher than a proportional commodity rate which had been in effect between the points in question until a short time prior to the date of the shipment and was restored within about sixty days thereafter by an amendment to defendant's tariffs; *Held*, That, under the admission of the defendant, and upon the Commission's knowledge of hay rates in the same territory, the class rate was excessive and unreasonable, and should not have exceeded the commodity rate. Reparation awarded on that basis.

C. W. Durbin for complainant.

William Ellis for defendant.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

A commodity rate on hay, published in conformity with the requirements of law and therefore legally in effect, was canceled and after the expiration of about two months was again published. During the interval a class rate was left in force and was higher by 1 cent

per 100 pounds than the commodity rate. The complainant asks that the class rate, so temporarily in effect and under which it shipped a carload of hay, be declared unreasonable and that reparation be awarded it for the excess charges which it was compelled to pay on the shipment.

The defendant admits, in view of all the circumstances shown of record, that the rate collected was unreasonable, but it avers that the class rate was the published rate, and therefore the only rate that could legally be demanded or received by it at the time the shipment moved. On this ground it challenges the authority of the Commission to require it to make reparation to the complainant. It contends that the payment of reparation on a shipment that moved under a published rate would be an alteration of the rate and a departure from it, and that the Commission has no power to permit the complainant to pay or to require the carrier to receive less than the amount prescribed in the published tariffs in effect at the time the transportation service was performed.

The defendant asserts that the only power the Commission has to modify or change a published rate is that conferred under section 15 of the act, the specific terms of which, as the defendant contends, limit our authority to the establishment of reasonable rates for the future, and do not authorize the Commission to change a rate upon which a shipment has already moved.

The same contention has been made before us in other cases, but it is urged here with much earnestness and is perhaps important enough to require a brief further consideration of the theory upon which the Commission awards reparation, based upon the difference between the higher rate under which a shipment moved and which the Commission condemns as unreasonable and the lower rate which, in the judgment of the Commission, would have been a reasonable rate, and which it therefore establishes as the rate for the future.

In *Poor Grain Co. v. Chicago, Burlington & Quincy R. R. Co.*, 12 I. C. C. Rep., 418, we said (p. 425):

A rate may be lawful in the sense that it is the regularly published rate and therefore the only rate under which traffic may lawfully move; and yet at the same time be unlawful in the sense that it is excessive and unreasonable in amount. Its lawfulness as the published rate is to be tested by the mere inspection of the schedules on file with the Commission; and if found to have been published in conformity with the requirements of law that rate must in all cases be charged and actually collected by the carrier even though it may be excessive. Whether or not it is unlawful in the sense of being excessive depends upon all the circumstances and conditions that are recognized as having a legitimate influence in rate making.

And in *Coomes v. Chicago, Milwaukee & St. Paul Ry. Co.*, 13 I. C. C. Rep., 192, we said (p. 194):

Although a rate is by the terms of the law binding upon all so long as it remains in effect, such rate may, nevertheless, upon proper procedure, be found and declared

to be unlawful in that it is unreasonably high or unduly discriminatory, and become in respect to shipments made while the unjust rate was in effect the basis of an award in damages. To hold otherwise would be to make the mere establishment of rates by a carrier conclusive of their reasonableness and justness while in effect. * * * While the establishment of rates by the carrier in the manner required by law fixes the standard of lawful rates for the time being and so long as such established rates are in effect, this standard is by no means conclusive of their reasonableness and justness.

But it is insisted that this view of a rate established by the carrier in the manner prescribed by law is illogical; that if the rate was lawful when paid by the shipper it must be held and considered to be a lawful rate for all purposes so far as shipments in the past are concerned; that it is a contradiction of terms to say that the published rate is the legal rate and to hold at the same time that it may be treated as an unreasonable and unjust and therefore an unlawful rate; and that so long as it remains the legal rate, that is to say, until it is voluntarily changed or ordered by the Commission to be changed, the payment of the published rate can not lawfully be made the basis of a subsequent claim for damages with respect to a shipment that moved under it.

We have not been able to take that view of the matter. It has been said that the word "legal" looks more to the letter and "lawful" to the spirit of the law; that "legal" imports rather that the forms of law are observed and the rules prescribed obeyed, and the word "lawful" that the act is rightful in substance. The two words may aptly be used as illustrative of the distinction that we have attempted to draw in the cases cited. It is provided in section 6 of the act that no carrier shall collect or receive a greater or less compensation than the rates specified in the tariff in effect at the time of the movement. Other provisions of law make it a misdemeanor for the carrier to depart from the published rate. In dealing with shippers the carrier is therefore required to conform the freight charges actually collected to the amount fixed in its published tariffs. In that sense the published rate in effect at the time of the movement is therefore the legal rate. It is what the letter of the law requires the shipper to pay and the carrier to collect.

But the first section of the act, following the rule of the common law, declares that all charges for services rendered by a carrier in the transportation of passengers or property shall be reasonable and just. It also declares every unjust and unreasonable charge for such a service to be unlawful. In publishing a rate or a schedule of rates the carrier therefore acts under this admonition of the statute. If it promulgates a rate in violation of this injunction, that is to say, if it establishes a rate that is excessive and therefore unjust and unreasonable, it is not a lawful rate when its reasonableness is subsequently questioned upon complaint filed. While it may be, and indeed is, the

legal rate—the rate that must be paid by the shipper and collected by the carrier because it is the published rate—the mere publication can not make a rate lawful that is unreasonable and excessive. No rate can be lawful, in the sense of being immune from attack, either with respect to past or future shipments, if it be excessive and unreasonable in amount.

The Commission has therefore held that the act not only gives a remedy against excessive and unreasonable rates as applied to shipments to be made in the future, but also affords the shipper a means of recovering excessive charges on shipments made by him in the past under rates that were unjust and unreasonable. A careful reading of the act, and particularly of sections 8, 9, 13, 14, and 16, seems to leave no doubt that the Commission, upon complaint made and hearing had, may award damages on past shipments if the proof shows to its satisfaction that the rates under which the shipments moved were excessive and unreasonable, for the law declares every unjust and unreasonable charge to be unlawful. The Commission also has authority to measure the shipper's damages upon the basis of such lower rate as it may find from the evidence would have been a reasonable and just charge for the service rendered. The sections referred to not only give to the Commission a procedure for trying such issues, but afford to shippers a process in the courts for enforcing any such order of the Commission.

The question of our authority to order reparation in such cases seems to be settled conclusively in *Texas & Pacific Ry. Co. v. Abilene Cotton Oil Co.*, 204 U. S., 426. It is there said (p. 442):

Although an established schedule of rates may have been altered by a carrier voluntarily or as the result of the enforcement of an order of the Commission to desist from violating the law, rendered in accordance with the provisions of the statute, it may not be doubted that the power of the Commission would nevertheless extend to hearing legal complaints of and awarding reparation to individuals for wrongs unlawfully suffered from the application of the unreasonable schedule during the period when such schedule was in force.

It only remains, therefore, to ascertain what merits there are in this complaint.

Kansas City seems to be an extensive distributing market for hay. It is concentrated there from the producing districts tributary to that city, the hay coming in ordinarily at local rates. After being sorted, classified, rebaled, or otherwise handled, it is then shipped out to consuming markets on what the published tariffs of the carriers participating in the outbound traffic designate as proportional rates, or rates applicable only on hay coming from points beyond Kansas City. These rates were briefly referred to in *North Brothers v. St. L. & S. F. R. R. Co.*, 13 I. C. C. Rep., 152, and again in *North Brothers v. C., M. & St. P. Ry. Co.*, 15 I. C. C. Rep., 70. In dis-

posing of this complaint we shall follow the rulings made in those cases without entering upon a consideration at this time of the validity of these proportional rates as they are actually applied on movements of hay from Kansas City.

The record shows that on July 13, 1907, the complainant shipped from Kansas City, in the state of Missouri, to Seymour, in the state of Iowa, a carload of hay weighing 41,600 pounds, which, if the out-bound billing accurately states the facts, originated at Yates Center, in the state of Kansas. For the movement to Seymour the complainant was compelled to pay a class rate of 13½ cents per 100 pounds. This was 1 cent higher than a proportional commodity rate of 12½ cents per 100 pounds which had been in effect between the points in question until a short time prior to the date of the movement and was restored within about sixty days thereafter by an amendment to the defendant's tariffs. The amount actually collected at the class rate was \$56.16. At the lower proportional commodity rate the charges would have amounted to \$52, a difference of \$4.16, for which amount reparation is claimed.

Under the admissions of the defendant, and upon our knowledge of hay rates in the same territory, we find that the class rate as applied to this movement out of Kansas City was excessive and unreasonable, and should not have exceeded the amount of the subsequently established proportional commodity rate. We therefore find that the complainant is entitled to reparation in the sum of \$4.16 with interest. We also find that the proportional commodity rate of 12½ cents per 100 pounds will be a reasonable rate on hay for the future from Kansas City to the point in question; but under the circumstances of the case and in view of the fact that this rate situation is substantially controlled by the order entered in the case last cited no order will be made herein with respect to the rate for the future.

It will be so ordered.

16 I. C. C. Rep.

No. 1428.

KANSAS CITY HAY COMPANY ET AL.

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY
COMPANY ET AL.

No. 1496.

CARLISLE COMMISSION COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY
COMPANY.

Submitted June 13, 1908. Decided April 5, 1909.

On June 30, 1907, Class C rates became effective on hay from Kansas City to the Mississippi River, Peoria, St. Paul, Chicago, and common points, because of the cancellation on that date of proportional commodity rates that had been in force between those points on hay coming from points beyond Kansas City. Shortly thereafter the latter rates were restored. During the interval the complainant made shipments to points in Illinois, Iowa, and Minnesota; *Held*, That the rates charged were excessive, and that the complainant is entitled to reparation on the basis of the proportional rates.

C. W. Durbin for complainants.

William Ellis for Chicago, Milwaukee & St. Paul Railway Company.

E. B. Peirce and *M. L. Bell* for Chicago, Rock Island & Pacific Railway Company.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

These two complaints were heard and submitted with the complaint in *Arkansas Fuel Company v. C., M. & St. P. Ry. Co.*, *ante*, and the same question of law there presented for our consideration

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was urged as a defense to these claims, namely, whether the Commission has authority under the act to award reparation on past shipments. Without further discussion of the question here it will suffice to say that we adhere to the view expressed in that case and in the cases there cited.

In these petitions reparation is demanded on carload shipments of hay originating at various points west of the Missouri River and reshipped from Kansas City, in the state of Missouri, to Peoria and La Salle, in the state of Illinois; to Des Moines, in the state of Iowa; and to Stillwater, in the state of Minnesota. The demand is based on the allegation that the rates collected were excessive and unreasonable.

The shipments were made during the months of July and August, 1907. Until June 30 of that year the proportional commodity rates on hay from Kansas City to the Mississippi River, Peoria, St. Paul, and Chicago, and points common therewith, were 12½, 15, 17½, and 17½ cents per 100 pounds, respectively. These rates were applicable on hay originating at points west of the Missouri River when re-consigned or handled at Kansas City or other Missouri River crossings to designated points east of the river. On that date the rates were canceled, the result being that Class C rates were left in effect and were collected on the shipments in question.

In September, 1907, the defendant, the Chicago, Milwaukee & St. Paul, restored certain of the canceled rates, and on June 25, 1908, it also established a proportional rate of 17½ cents per 100 pounds to Stillwater and a rate of 12½ cents per 100 pounds to Des Moines. The shipments upon which reparation is asked were made during the interval while Class C rates were in effect. Throughout that period, as should be observed, the lower proportional rates were in force in this territory over the lines of the Atchison, Topeka & Santa Fe. In view of that fact and the prior existence of the lower rates over its own lines and their prompt restoration after a brief period of higher rates, that defendant concedes that the charges actually collected on the shipments in question were unreasonable and excessive.

But the other defendant in the first of the above-entitled complaints, the Chicago, Rock Island & Pacific, denies that Class C rates were excessive and unreasonable. Its schedules of rates then in effect on movements of hay out of Kansas City were in some confusion, and apparently were not at that time and are not now in conformity with our requirements. In August, 1907, it published proportional commodity rates on hay from Kansas City to certain designated points. In another tariff covering the application of rates it was provided that La Salle should take Peoria rates and Des Moines should take the Mississippi River rates. But apparently there were no such cross references between the two tariffs as our rules require,

and the defect, if it still exists, ought to be promptly corrected. If this defendant is moving hay at this time on the basis of these two tariffs, the application of Peoria and Mississippi River rates to La Salle and Des Moines under the issues in question seems to be without the warrant of lawful tariff authority.

On the record and following the rulings made in *North Brothers v. St. L. & S. F. R. R. Co.*, 13 I. C. C. Rep., 152, and more particularly in *North Brothers v. C., M. & St. P. Ry. Co.*, 15 I. C. C. Rep., 70, we find that the charges collected on the shipments in question were excessive and unreasonable and that the class rates from Kansas City to destination ought not to have exceeded the prior proportional commodity rates which were subsequently restored; that in case No. 1428 the Kansas City Hay Company is entitled to reparation in the sum of \$38.74, with interest from December 1, 1907, being the difference between the charges collected under the class rate of 19½ cents on 4 carloads of the aggregate weight of 86,100 pounds and the amount that would have been collected on the basis of the prior proportional commodity rate of 15 cents that was subsequently restored and is now in effect. We further find in the same case that the Carlisle Commission Company is entitled to reparation in the sum of \$20.52, with interest from the same date, being the difference between the charges collected on 2 carloads of the aggregate weight of 58,600 pounds and the charges that would have been collected at the prior proportional commodity rate of 12½ cents that was subsequently restored and is now in effect.

In the second of the above-entitled complaints we find that the charges collected were excessive and unreasonable and that the 23-cent rate actually assessed upon 1 carload of hay, weighing 20,000 pounds, moving from Kansas City to Stillwater, in the state of Minnesota, ought not to have exceeded the prior proportional commodity rate of 17½ cents that was subsequently restored and is now in effect; and that on the basis of the lower rate complainant is entitled to reparation in the sum of \$11 with interest from August 8, 1907. We further find that the lower proportional commodity rates on the basis of which reparation is here awarded will be reasonable rates for the future. But the rates for the future to Peoria, La Salle, and Des Moines are controlled by the order in the case last cited; and for that reason the order herein entered will fix for the future only the rate to Stillwater.

It will be so ordered.

No. 1983.

ALLENDER ET AL.

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY ET AL.

Decided April 13, 1909.

Through error of a railroad agent complainants were unable to use the return coupons of their round-trip special excursion tickets with stop-over privilege, but without additional cost were supplied by the carrier with regular limited tickets. Upon complaint filed setting up claim for damages for loss of employment as fruit pickers which complainants hoped to secure at a point where their original tickets permitted stop-over; *Held*, That such damages are altogether too speculative to be accepted either as the basis for an order by the Commission or for a judgment in a court of law.

No appearance for complainants.

Guernsey, Parker & Miller for defendants.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

On June 9, 1908, Will Allender and Kenneth Moore purchased from the agent of the Chicago, Burlington & Quincy Railroad Company at Bloomfield, in the state of Iowa, 2 special tickets to Ogden, in the state of Utah. They were round-trip tickets, and were on what is known as the "double-contract" form, of which only the going coupons are given to the passenger, with an exchange coupon attached, to be presented by the passenger to the agent at destination in exchange for the return coupons, which the selling agent is supposed to mail to the agent at destination immediately after the ticket is sold. The validity for the return journey of the particular tickets now under consideration was limited to October 31 of the same year, and the terms of the tickets and of the tariff under which they were sold gave the holders the privilege of stopping over at any point on either the going or the return journey, or both. The complainants purchased the tickets and started on their journey to Ogden for the purpose of seeking employment as fruit pickers. With that thought

in mind they stopped off on the going journey at Grand Junction, in the state of Colorado. Finding, however, that they were too early for the fruit-picking season at that point, they concluded to make a pleasure trip of the outgoing journey, and taking the train again continued to Ogden, the destination named on the tickets. On June 28 they presented the exchange coupons to the agent of the Denver & Rio Grande Railroad at Ogden. Although the agent made diligent search in his office and took the matter up promptly with his superior officers by telegraph, he was unable to find any trace of the return coupons. It subsequently developed that through inadvertence on the part of the agent of the principal defendant at Bloomfield the return coupons had been sent to Grand Junction, Colo., instead of to Ogden, Utah. Being advised of this state of affairs, the agent at Ogden on June 29 took up the exchange coupons, and, without additional charge, issued to the complainants 2 first class limited one-way tickets from Ogden to Bloomfield. These tickets did not admit of a stop-over on the return journey, and the complainants therefore proceeded directly to Bloomfield and were unable to stop over at Palisade, in the state of Colorado, in order to seek employment there, as they had intended to do, according to the statements they now make. The complainants claim to have asked the agent at Ogden for return tickets that would enable them to stop off on their way back to Bloomfield, as they would have been entitled to do had they been in possession of the return coupons attached to the tickets purchased by them at Bloomfield; but this is denied in the answer of the Denver & Rio Grande Railroad Company.

The prayer of the petition is for reparation in the sum of \$204, of which \$4 represents the expense incurred by the complainants, as is alleged, for board and lodging while waiting at Ogden for the return coupons. The remaining \$200 is demanded as damages for the alleged loss of their summer employment as fruit pickers.

These are the facts as they are alleged in the pleadings and stated in the correspondence that was had with the complainants and the defendants while the matter was before us informally. The claim having been presented later in a formal complaint was regularly set for hearing at Des Moines, Iowa, on March 10, 1909, of which notice was given to each of the complainants in ample time and in due course. When the case was called for hearing neither complainant appeared, either in person or by attorney, and no word has since been received from either of them.

In dismissing the complaint, it may be well to say that whatever may be the ultimate conclusion of the Commission as to its power under the act to award damages for injuries and wrongs not

arising out of unlawful rates, and that question is under further consideration, it is clear that neither the Commission nor a court could properly award damages of the character demanded here by the complainants. Even if the return coupons had been delivered to them at Ogden in accordance with the contract entered into by the defendants when the original tickets were purchased, the question whether they could have secured employment for the summer at Palisade lies wholly within the realm of conjecture. Moreover, although the return tickets finally given to them at Ogden admitted of no stop-over on the journey back to Bloomfield, and the defendants deny that the complainants asked for stop-over tickets, the complainants were nevertheless under no obligation to return directly to Bloomfield. They could have used those tickets to Palisade, and could have disembarked at that point and sought employment there; and at the conclusion of the summer, if work had been found, or at any time at their convenience prior to October 31, they could have required the defendants under the contract embodied in the original round-trip tickets to transport them from Palisade to Bloomfield without further cost to them. This was the obvious course to pursue if they really believed that employment for the summer could be obtained at Palisade; and we are aware of no theory of law that would excuse them from pursuing that course and enable them to recover from the defendants the amount that they think they might have earned at Palisade during the summer. Such a claim for damages is altogether too speculative to be accepted as the basis either for an award of damages by this Commission or for a judgment in a court of law.

An order will be entered dismissing the complaint.

16 I. C. C. Rep.

No. 1464.

OZARK FRUIT GROWERS ASSOCIATION

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY ET AL.

No. 1465.

SAME

v.

SAME.

Submitted March 1, 1909. Decided April 13, 1909.

1. Defendants' rates for transportation of strawberries and peaches from points in the Ozark fruit region to points to the east, north, and west, not found to be unreasonable.
2. The carload minima applying in connection with the refrigeration service should not exceed the minima governing the transportation charges—in the case of strawberries not to exceed 17,000 pounds, and in the case of peaches, 20,000 pounds. Ruling reserved as to reasonableness of refrigeration charge.

McGill & Lindsey and P. A. Rodgers for complainant.

E. B. Peirce for St. Louis & San Francisco Railroad Company, and Chicago, Rock Island & Pacific Railway Company.

M. L. Clardy, J. C. Jeffery and B. M. Flippin for Missouri Pacific Railway Company, and St. Louis, Iron Mountain & Southern Railway Company.

S. W. Moore and F. H. Wood for Kansas City Southern Railway Company.

F. L. Littleton for Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

S. F. Andrews for Illinois Central Railroad Company.

T. W. White for Vandalia Railroad Company, Pennsylvania Railroad Company, Pennsylvania Company, and Pittsburg, Cincinnati, Chicago & St. Louis Railway Company.

REPORT OF THE COMMISSION.

LANE, Commissioner:

Complainant is an association of fruit growers, the members of which have farms located in the foothills of the Ozark Mountains in

southwestern Missouri and northwestern Arkansas. The object of the organization is to secure markets for the fruit raised by its members and to look after the general interests of the fruit business in that section, including transportation rates and facilities.

The defendants include carriers extending from the Atlantic Ocean to the Pacific and from Canada to the Gulf of Mexico, and there are directly put in issue freight and refrigeration rates from practically all stations in the Ozark country at which fruit originates to some 78 cities situated in numerous states, while the prayer is that rates to *all* other stations on the lines of defendants be fixed proportionately.

To set forth the rates between all points of which complaint is made would require a very elaborate table, which is unnecessary for the purposes of this opinion.

At the hearing the complaints, one as to strawberries and the other as to peaches, were consolidated, and the testimony, so far as applicable, applies to each. There is substantially no difference in the method of transportation, though strawberries move to market two or three months earlier than peaches, and hence probably somewhat less ice is necessary for refrigeration. In both cases complaint is made of the rates of transportation and of refrigeration, the charges being separate.

Both as to strawberries and peaches complainant suggests as a just and reasonable rate 2 cents per 100 pounds for every 25 miles or fraction thereof to apply on shipments of 150 miles or more, such charge to be made on the shortest mileage between the point of origin and the point of destination, and that 12 cents be charged for any distance under 150 miles. The application of this schedule would reduce the rate on strawberries from Springfield, Mo., to Atchison, Kans., from 39 to 20 cents; to Denver, from 115 to 70 cents, and to Chicago, from 59 to 42 cents.

Complaint is also made that the lines from the points of origin to the Mississippi River have in effect a minimum of 17,000 pounds on strawberries, while the Great Northern and the Northern Pacific have a minimum of 20,000 pounds, and the lines east of the Mississippi River 18,000. It is claimed that if strawberries in excess of 15,300 pounds are loaded that they will not reach destination in good order. At the hearing an amendment was offered praying that the minimum be made 14,400 pounds, based upon 480 crates weighing 30 pounds each. The complaint alleges that the minimum on peaches is 24,000 pounds and asks that it be reduced to 20,000 pounds. At the hearing, however, as appears from the tariffs, the minimum has been and is now 20,000 pounds. The complainant thereupon asked that it be reduced to 18,000 pounds.

Complaint is also made of the refrigeration charges, and a schedule of one-half a cent per crate per 100 miles or fractional part thereof is suggested as a reasonable charge on strawberries, with a minimum of 510 24-quart crates, and as to peaches a rate of 1½ cents per 100 pounds for each 100 miles or fraction thereof is suggested.

The questions for decision are:

1. Are the transportation rates on strawberries and peaches unreasonable?

2. Are the refrigeration charges on strawberries and peaches unreasonable?

3. Is the minimum on strawberries of 17,000 pounds west of the Mississippi unreasonable?

4. Is the minimum of 20,000 pounds on peaches unreasonable?

It appears that the minima are different for the transportation charges and for refrigeration. The Commission in the recent case of *Waxelbaum & Co. v. Atlantic Coast Line Ry. Co. et al.*, 12 I. C. C. Rep., 178, fixed the minima the same, and we see no reason to hold differently in these cases. Where the minima are different, the carriers should make them uniform, and it will be so ordered. While there might have been some reason before the passage of the amendment to the act of June 30, 1906, for maintaining different minima, on the theory that the transportation and refrigeration charges were made by different companies, that is not now the case, as the carrier furnishes both, and we can not imagine a case where the maintenance of different minima accomplishes any good end, and such practice in fact only results in confusion to both shipper and carrier in making out the expense bills. The Illinois Central and other carriers which supply their own refrigeration directly apply the same minima.

The question as to the reasonableness of the refrigeration charges will not now be passed upon, owing to the fact that there is not sufficient evidence in this record upon which to determine the question.

Before taking up the reasonableness of the rate we will first dispose of the question of car minimum.

At present the originating carriers charge on a minimum of 17,000 pounds, which is practically 567 crates of strawberries of 30 pounds each, claiming that that weight may be loaded and properly refrigerated. Complainants contend that the minima should not exceed 480 crates, or 14,400 pounds. There is no dispute but that a much greater weight than 17,000 pounds of strawberries may be loaded in a car, the question here turning not upon the capacity of the car, but upon the weight that may be transported under refrigeration without injury.

The dimensions of a refrigerator car are 96 by 97 by 378 inches, or 3,519,936 cubic inches, while a crate of strawberries is 7 by 15 by 22

inches, or 2,310 cubic inches, which indicates that it is physically possible to load about 1,523 crates of berries in a car, the weight being 45,690 pounds, while the minimum provided is 567 crates, weighing 17,010 pounds.

There are several methods of loading strawberries. It is generally contended by growers that in order to properly refrigerate the crates should be somewhat separated, so as to leave an air space. The bottom of the ice bunkers is about 18 inches from the bottom of the car, and the intention is to keep these bunkers filled, but of course the ice falls, as it melts. If too many crates are packed crosswise in a car, the lack of air space between them prevents proper refrigeration; if they are loaded too high in the car a like result follows from the contact of the upper tier with the heated atmosphere in the upper portion of the car. As to just where the line should be drawn for perfect refrigeration is a matter of dispute. Proper refrigeration depends principally upon keeping the bunkers filled with ice. From the evidence it appears that the producers in nearly all cases load up to the minimum, or slightly in excess thereof, evidently finding it to their advantage to take the chance of imperfect refrigeration rather than pay the extra charge per crate which would follow from loading below the minimum. During one year there were shipping points in this territory where the maximum load was 510 crates, or 15,300 pounds, and it is only fair to presume that the refrigeration was more satisfactory than in cases where the load was 567 crates. There was some dispute as to this, but it would seem to follow necessarily that they would be better refrigerated, owing to the well-known law of physics that heated air, which injures the berries, rises to the top of the car.

In the determination of a question of this kind by the Commission, however, it would seem that the interest of the shipper demands that the minimum should be fixed as high as the product may be carried under the *most* advantageous circumstances, and that the rate per 100 pounds should be made as low as possible, based on this high minimum. The reason for this is that if the shipper deems it advantageous to ship fewer crates in a car, the only penalty upon him is that he will have to pay a somewhat higher rate per crate, depending upon how much below the minimum he loads. A high minimum and a low rate automatically adjust themselves to the needs of the shipper, while returning to the carrier the same revenue for the use of its car, which is only fair, as the car and refrigeration are the same to the carrier whether 480 or 567 crates are in the car.

Of course the minimum should never exceed the capacity of the car, and when fixed at less than that, and the shipper finds it advantageous to load still lighter, it is only reasonable and just that he should pay a somewhat higher rate on the freight he does ship

There is no question but that many of the cars reach destination in good condition, and the fact that some cars do not is insufficient ground for reducing the minimum. For the reasons stated, the Commission finds that the present minimum is not unreasonable.

We are also of opinion that the 20,000-pound minimum on peaches should not be reduced. As noted above, complainant, in its petition, asked that the minimum be reduced from 24,000 to 20,000, and upon ascertaining upon the hearing that the minimum was 20,000 pounds it then requested that the minimum be reduced to 18,000 pounds.

We have not looked into the rate and the minimum between all the points named in the complaint, because they are too numerous, but we have selected Kansas City, Omaha, St. Louis, and Chicago as representative destination points, and Springfield, Mo., and Fort Smith, Ark., as representative points of origin, and find, as appears from the tables here given, that the minima are effective from such points of origin to the points of destination.

A further examination of the tariffs on strawberries and peaches on file with this office shows that there are through routes and joint rates from this Ozark producing country to a large number of destination points east and west of the Mississippi River, which tariffs are evidently intended to provide rates to all points to which there is any *actual* movement of strawberries and peaches. In these tariffs the minimum on strawberries from the point of origin to destination is 17,000 pounds and on peaches 20,000 pounds. Of course, if a shipment is made to some point east of the Mississippi River to which there is no joint rate, then after crossing the river the minimum is governed by the classification in that territory, which provides 20,000 pounds.

An examination of the tariffs of joint rates leads us to believe that a carload of strawberries or peaches would seldom move to any destination point not set forth in these tariffs, and therefore it is unlikely that a question would arise as to this minimum of 20,000 pounds east of the river. From points of origin in Tennessee and Mississippi the minimum provided for strawberries in the commodity tariffs is 18,000 pounds, while from Alabama it is 20,000 pounds, as compared with the 17,000-pound minimum from the Ozark country.

We now come to a consideration of the larger question, the reasonableness of the rates on strawberries and peaches.

The Commission has had before it many cases involving rates on perishable products and it is unnecessary to enter upon any elaborate description of the manner in which the business is conducted. However, to have a proper understanding why somewhat higher rates are allowable upon the movement of perishable products than others demands that the nature of the service required be outlined.

In this section of the country strawberries ripen in April and peaches in July; the shipping season in each case extending over a period of about thirty days. Railroads which have developed the perishable fruit and vegetable business to an extent that justifies it, such as the Illinois Central Railroad, own the necessary refrigerator cars to conduct the business, but the St. Louis & San Francisco Railroad Company, along the lines of which this fruit originates, not having developed sufficient of this traffic depends for its refrigerator cars either upon other railroads or private owners. During the year 1908 it was served by the Armour Company, that company fixing the charges for refrigeration, the railroad collecting from the shipper and turning the money over to the Armour Company, retaining no part thereof. In order to have on hand the necessary equipment to move a crop like strawberries at just the time they are ready for the market, it is necessary some months ahead to begin the accumulation of refrigerator cars and to park them along the lines of the company where the fruit originates, in order that they may be on hand when the fruit ripens. The amount of the crop can only be estimated, and it is upon this estimate that the requisition for cars is made by the carrier upon the Armour Company. Necessarily, to meet the possible demand the maximum number of cars must be provided. Many conditions intervene between the time when the original estimate is made and the time the crop is ready to be gathered which may affect the number of cars needed. Owing to unfavorable conditions of the weather, the crop is often greatly reduced, and in case of an open winter and an early spring the berries ripen earlier than at other times, and this is true as to peaches. For these reasons the carriers generally provide more cars than are necessary, many of the cars being hauled into this territory, parked for several months, and moved out empty. There is no method by which this may be overcome. It is one of the incidents of handling a highly perishable crop. When the crop is ready for movement, notice is given by the shipper, the car is taken from the storage track to the icing plant, where the ice bunkers are filled, and the car moved to the particular station where the berries are to be loaded. In lowering the temperature of the heated car and the heated berries, of course a quantity of ice is consumed, and, after loading, the car generally has to be again moved to the icing plant and the bunkers refilled, all of which service is performed by the carrier and included in the transportation rate. The cars are then assembled at some junction point, made into a special train of from 1 to 8 or 10 cars, and moved to market at passenger-train speed. The cars generally go through to Kansas City without reicing. If destined beyond, reicing is required.

It appears that the tare weight of an Armour car is 36,000 pounds, while the tare weight of an ordinary stock car is 31,000 pounds, which, of course, means that the perishable business is just that much more expensive to handle than stock. In addition to this, refrigerator cars carry on an average 4½ tons of ice, for the carriage of which no compensation is received other than as covered by the rate on the fruit.

The table below is a comparison of rates from representative points in the Ozark country to Kansas City, Omaha, St. Louis, and Chicago, with rates from points in Tennessee, Alabama, and Mississippi, more or less competitive, and also on peaches from St. Andrews, S. C., and Cordele, Ga., to various points of destination. The purpose of the table is to show at a glance whether other producing sections of strawberries and peaches are enjoying rates lower than those from the Ozark country. The last section of the table, headed "General average of figures in A to H above," illustrates clearly the comparison intended. That part of the table is an average of that which precedes it.

Statement of rates, in cents per 100 pounds, on strawberries and peaches to and from various points.

TABLE A.—FROM SPRINGFIELD, MO.^a

To —	Distance.	Strawberries.			Peaches.		
		Rate per 100 pounds.	Earnings per car.	Rate per ton per mile.	Rate per 100 pounds.	Earnings per car.	Rate per ton per mile.
	Miles.	Cents.		Mills.	Cents.		Mills.
Kansas City, Mo.....	202	39	\$66.30	38.6	35	\$70.00	34.6
Omaha, Nebr.....	394	55	93.50	27.9	47	94.00	23.9
St. Louis, Mo.....	239	47	79.90	39.3	40	80.00	33.5
Chicago, Ill.....	524	59	100.30	22.5	49	98.00	18.7

TABLE B.—FROM FORT SMITH, ARK.^a

Kansas City, Mo.....	336	59	100.30	35.1	40	80.00	23.8
Omaha, Nebr.....	528	77	130.90	29.1	51	102.00	19.3
St. Louis, Mo.....	415	59	100.30	28.4	44	88.00	21.2
Chicago, Ill.....	701	80	138.00	22.8	55	110.00	15.7

TABLE C.—FROM HOLLOW ROCK, TENN.^b

Buffalo, N. Y.....	823	69	^c 138.00	16.7	62.7	135.40	16.4
Chicago, Ill.....	540	54	97.20	20.0	46.8	93.60	17.0
St. Louis, Mo.....	253	39	70.20	30.8	42.3	84.60	33.4
Louisville, Ky.....	282	39	70.20	27.6	38.7	77.40	27.4
Cincinnati, Ohio.....	396	48	86.40	24.2	46.8	93.60	23.6

^a Strawberries, minimum weight, 17,000 pounds; peaches, minimum weight, 20,000 pounds.
^b Strawberries, minimum weight, 18,000 pounds; peaches, minimum weight, 20,000 pounds.
^c 20,000 pounds.

Statement of rates, in cents per 100 pounds, on strawberries and peaches to and from various points—Continued.

TABLE D.—FROM STEVENSON, ALA.^a

To—	Distance.	Strawberries.			Peaches.		
		Rate per 100 pounds.	Earnings per car.	Rate per ton per mile.	Rate per 100 pounds.	Earnings per car.	Rate per ton per mile.
	Miles.	Cents.		Mills.	Cents.		Mills.
Buffalo, N. Y.....	840	66	132.00	15.7	55.5	111.00	13.2
Chicago, Ill.....	557	62	124.00	22.2	52.5	105.00	18.8
St. Louis, Mo.....	435	49½	99.00	22.7	43.2	86.40	19.8
Louisville, Ky.....	299	26	52.00	17.4	31.5	63.00	21.1
Cincinnati, Ohio.....	413	45	90.00	21.7	39.6	79.20	19.1

TABLE E.—FROM JACKSON, TENN.^b

Madison, Wis.....	560	60	108.00	21.4	46	96.00	17.1
St. Louis, Mo.....	261	44	79.20	33.7	40	80.00	30.6
Omaha, Nebr.....	674	79	142.20	23.4	54	108.00	16.0
Louisville, Ky.....	337	44	79.20	26.1	40	80.00	23.7
Peoria, Ill.....	394	52	93.60	26.4	43	86.00	21.8

TABLE F.—FROM GRENADA, MISS.^b

Madison, Wis.....	706	60	108.00	17.0	55	110.00	15.5
St. Louis, Mo.....	407	44	79.20	21.6	44	88.00	21.6
Omaha, Nebr.....	820	79	142.20	19.2	54	108.00	11.9
Louisville, Ky.....	483	44	79.20	16.1	44	88.00	16.1
Peoria, Ill.....	540	52	93.60	19.2	52	104.00	19.2

TABLE G.—FROM ST. ANDREWS, S. C.^c

Baltimore, Md.....	552	67	120.60	24.2			
Washington, D. C.....	512	67	120.60	26.2			
Pittsburg, Pa.....	814	89	160.20	21.8			
Philadelphia, Pa.....	517	67	120.60	25.9			
New York, N. Y.....	608	67	120.60	22.0			

TABLE H.—FROM CORDELE, GA.^d

Richmond, Va.....	585				70½	141.00	24.1
Norfolk, Va.....	581				70½	141.00	24.3
Washington, D. C.....	701				86½	173.00	24.6
Philadelphia, Pa.....	838				89½	179.00	21.3
Baltimore, Md.....	741				86½	173.00	23.3

GENERAL AVERAGE OF FIGURES IN TABLES A TO H ABOVE.

Springfield, Mo.....	339	50	85.00	32.1	42.7	85.50	27.6
Fort Smith, Ark.....	495	68.7	116.87	28.8	47.5	95.00	20.0
Hollow Rock, Tenn.....	459	50	92.40	23.9	47.5	96.92	23.6
Stevenson, Ala.....	509	49.7	99.40	19.9	44.5	88.92	18.2
Jackson, Tenn.....	445	56	100.44	26.2	44.6	90.00	21.8
Grenada, Miss.....	591	56	100.44	18.6	49.8	99.60	16.8
St. Andrews, S. C.....	601	71½	128.52	23.6			
Cordele, Ga.....	689				80.7	161.40	23.5

^a Minimum weight on both strawberries and peaches, 20,000 pounds.
^b Strawberries, minimum weight, 18,000 pounds; peaches, minimum weight, 20,000 pounds.
^c Rate is for any quantity; have used 18,000 pounds to the car.
^d Peaches, minimum weight, 20,000 pounds.

Perhaps the most satisfactory comparison to ascertain whether a relative injustice is being done one section against another, or one commodity against another, is through the earnings per car. This table shows that the earnings from Springfield and Fort Smith are somewhat in excess of those from other points, the difference being greater on strawberries than on peaches. Complainant's witnesses at the hearing admitted that the rates on peaches were not excessive compared with other sections.

It may be said to be generally true on all traffic west of the Mississippi River that somewhat higher rates are made than east of the river. This appears to be true in this case and we do not think that the relation between east and west of the river is out of proportion when other commodities are compared. Nor can we consider these rates unreasonable when compared with the rates on other commodities. Of course, it is always possible to find particular rates that are less than those under investigation, but this Commission has had occasion during the last two years to prescribe rates on such commodities as coal, cotton, and other nonperishable freight in this southwestern territory and we have allowed earnings per car that compared very favorably with those earned on this perishable freight.

As pointed out above, the handling of perishable fruit is probably the severest test of railroad transportation, so far as care, attention, and expense are involved. The very essence of such transportation is expedition. In addition to the speed required, there must be provided a special car, loaded with ice, which has to be renewed when the transportation is beyond certain fixed distances, or if for any cause there is delay. It is of vital importance to the growers of perishable products and the further development of that business, which is increasing beyond the expectations of the most sanguine, that nothing should be done which would have a tendency to decrease the efficiency of the service, and while there may be reasons for making reductions in the future for the transportation of perishable products from this territory, we think it not justified now. The present rate of 59 cents per 100 pounds from Springfield to Chicago means substantially five-sixths of a cent per quart, and if these rates were reduced 20 per cent it would only affect the selling price one-sixth of a cent a quart, while it would require a very slight decline in the efficiency of the service to reduce the value of the strawberry one-sixth of a cent per quart, and in order that the carrier may have every inducement to render efficient service, we deem it better not to make a reduction in the rates, especially as the earnings per car do not appear to be exorbitant as compared with the earnings of what is generally termed "dead" freight, which may be hauled at slow speed. In another case of the same complainant, filed at the same time and

decided herewith, it appears that the carload earnings on apples to the southwest are at present just about the carload earnings on strawberries and peaches receiving this special service, and we have ordered a slight reduction on apples. We think a nonrefrigerated freight like apples should be hauled at something less than refrigerated products.

It is to be distinctly understood that we have dealt with these complaints and with the questions raised therein according to the record which the shippers have made. It is not to be understood that we herein pass specifically upon each individual rate, but we find nothing unreasonable or unjust in the scheme of rate making adopted by the carriers as to these commodities, and the rates as a whole bear satisfactorily whatever test of reasonableness we have been able to apply.

An order will be entered that the defendants shall make effective the same car minimum on refrigeration charges and transportation charges—in the case of strawberries, not to exceed 17,000 pounds, and peaches, 20,000 pounds.

As stated above, the refrigeration charges will not be passed upon at this time. As to all other questions raised, save as above, the complaints will be dismissed

16 I. C. C. Rep.

No. 1472.

WILSON PRODUCE COMPANY ET AL.

v.

PENNSYLVANIA RAILROAD COMPANY.

No. 1692.

F. WILBERT BROTHERS ET AL.

v.

SAME.

No. 1693.

H. W. JOYNES

v.

SAME.

Submitted February 10, 1909. Decided April 13, 1909.

Defendant's track-storage tariff, applying to carload shipments of fruit and produce received at the Pennsylvania Lines Produce Yards at Pittsburg, Pa., provides that after the expiration of 48 hours' free time, track-storage charges will be assessed as follows: For the first two days, \$1 per car per day or fraction thereof; for the next succeeding two days, \$3 per car per day or fraction thereof, and for each succeeding day \$4 per car per day or fraction thereof. On rehearing of complaint challenging legality of these charges; *Held*:

1. The law does not require a carrier to give its cars and tracks under any terms for use as warehouses or places of business.
2. After allowing a reasonable time for unloading cars, a carrier may impose such charges for further detention as will lead to the speedy release of its equipment.
3. A carrier has a right to impose such charges at its produce terminal as will render that terminal available for the purpose for which it was intended.
4. The imposition of higher track-storage charges at the Pennsylvania Lines Produce Yards in Pittsburg than at other points does not constitute undue discrimination in view of the substantial dissimilarity of conditions. Complaint dismissed.

E. W. Stowe, L. K. & S. G. Porter, and J. J. Foley for complainants.

Patterson, Sterrett & Acheson, and George Stuart Patterson for defendant.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

On petition for rehearing filed by complainants the case of *Wilson Produce Company et al. v. Pennsylvania Railroad Company* (No. 1472), 14 I. C. C. Rep., 170, was reopened and additional evidence taken. Two other complaints (Nos. 1692 and 1693), involving the same issues as those in the case under review, were consolidated therewith and the three cases will be disposed of in this report.

After the expiration of forty-eight hours free time charges for track storage on carload freight at Pennsylvania Lines Produce Yards, Pittsburg, are as follows: For first two days, \$1 per car per day or fraction thereof; for next succeeding two days, \$3 per car per day or fraction thereof; for each succeeding day, \$4 per car per day or fraction thereof. Sundays and legal holidays are excepted when computing free time and storage charges. The legality of these charges has been upheld, but the case was reopened for the purpose of receiving evidence with respect to two points, namely: (1) Whether the storage charges imposed by the defendant on fruits and vegetables in Pittsburg unduly discriminate against Pittsburg in favor of other cities where no such charges are made; and (2) whether the charges unduly discriminate against the produce yards of defendant in favor of yards of other railroads or other yards of defendant in the city of Pittsburg.

It is not deemed necessary to again refer in detail to the facts upon which the conclusion under review was based. In brief, it is clearly established that the situation with respect to the receipt of fruit and produce at Pittsburg is peculiar. Ninety-five per cent of all such commodities received in Pittsburg is received at the Pennsylvania Lines Produce Yards. This result has been brought about by dealers in these products who have made this particular yard the produce market of the city. It is to this yard that retail and wholesale buyers go for produce of all kinds, and purchases are made from the cars on examination of samples therein. The evidence shows that all fruit dealers in the city who conduct business of any importance have their shipments for the most part consigned to the produce yards of the defendant. This is done because the commodities may there be disposed of to the best advantage. Facts respecting the detention of cars by dealers and the retailing therefrom while they are standing in the yards are fully outlined in the former decision, and it appears

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297 to 373 cars and during the year 1908 has expended some \$12,000 in paving between tracks.

The defendant contends that the peculiar conditions under which produce business is conducted in Pittsburg have brought about the storage charges there. Practically all the fruit and produce, bulk and package, received in Pittsburg from whatever source is handled at the yards of defendant. From a statement furnished by defendant it appears that at Philadelphia produce is handled by the Pennsylvania Railroad Company at Thirtieth and Market streets, at Thirty-first and Chestnut streets, and at the Vine Street Station; by the Philadelphia & Reading Railway Company at Front and Noble streets and at Second and Master streets; by the Baltimore & Ohio Railroad Company at pier 12, North Delaware River; and by the Merchants & Miners' Transportation Company, a water line, at pier 18, South Delaware River. The Pennsylvania Railroad handles at the various stations referred to approximately 60 per cent of the produce coming into Philadelphia, of which 44 per cent is package freight handled by the railroad company through a freight house at Thirtieth and Market streets.

At Baltimore the Pennsylvania Railroad Company handles about 88 per cent of the produce traffic; it handles package produce at Bolton station, while the bulk produce is delivered at the Bolton yards. The Baltimore & Ohio Railroad Company handles about 2 per cent at Montclare and Camden, while the balance, or approximately 59 per cent, is handled by the various water lines reaching Baltimore.

At Buffalo the Pennsylvania Railroad Company delivers at its Louisiana street team tracks about 38 per cent of the Buffalo produce traffic, the remaining 62 per cent being divided between the New York Central system, the Erie, the Delaware, Lackawanna & Western, and the Lehigh Valley.

At Cincinnati, Cleveland, Columbus, Grand Rapids, and Chicago the produce traffic is divided between different lines, thus presenting various conditions, competitive and otherwise, from those existing at Pittsburg.

It is stated that bulk perishable products are handled at Second and Market streets in Philadelphia, at which point there is a market, and peddling from cars, after the Pittsburg method, is practiced to a greater or less degree, but it is insisted that the volume is not sufficient to seriously interfere with the yard operation; and as to bulk perishable products the same condition exists in the Bolton yard at Baltimore. It does not appear that there is peddling from cars to any extent at Buffalo, and there is no evidence with respect thereto regarding the other cities alleged to be in competition with Pittsburg. It is also pointed out that at other cities traffic in fruit and produce is dis-

tributed between different carriers, rail and water, thereby eliminating the situation which has made the produce yards at Pittsburg the market with consequent car detention.

With respect to competition with other yards at Pittsburg it appears that only a few cars are handled at any station of the defendant other than the produce yards. An examination of the records at the Eleventh Street Station shows that during the two years, 1906 and 1907, there were 230 cars of produce handled at that station as compared with 44,964 cars at the produce yards during the same period, and the consignees of cars at Eleventh street were, with the exception of a few, most of whom were not produce dealers and who during the entire period handled only 33 cars, dealers at the produce yards. The cars delivered at the Eleventh Street Station were promptly unloaded and hauled away, and there is no produce market at this point and nothing is sold from the cars. Practically no produce has been received at the station at Penn avenue and Tenth street, nor at Grant Street Station. A dealer in Allegheny testified that he received shipments from the defendant, and that after three days he unloaded the cars into his warehouse, but that he did business in the produce yards, and retailed out of the cars there.

The records of the defendant company show that at one of the Allegheny delivery yards during the year 1907 this dealer had 3 cars of produce and 2 cars in 1908. At the other Allegheny yard there were no cars delivered to this dealer in 1907 and in 1908 19 cars arrived for him, of which he ordered 5 to be sent to the produce yards and unloaded 14 in the Allegheny yard, all of which were unloaded within two days' free time. It is contended by the defendant that the shipment of these occasional cars to other yards in Pittsburg or the surrounding territory can not affect the validity of track-storage charges in the produce yards; that such charges are imposed to meet a specific situation which exists only in the produce yards; that no such situation exists in the other yards, and that there is no produce market at any other point in Pittsburg.

The defendant also insists that the steady increase of business at Pittsburg since the imposition of the charges shows that there is no competition which vitally affects the interest of the Pittsburg dealer. In 1903, the date of the imposition of the charges, 18,558 cars were received and in 1908 more than 23,000 cars.

We are constrained to believe, from a careful reading of the record in this case, that the complainant has misconceived the legal duty of the carrier and is seeking, through the Commission, the enforcement of obligations which, as a common carrier, the defendant has not undertaken. The Pennsylvania Railroad is doubtless itself responsible for this misconception. The railroad has gone into busi-

ness in Pittsburg as the proprietor of a public fruit and vegetable market. Its produce yard is at the same time a railroad terminal, a warehouse, and a public market place. But its difficulties do not arise out of the performance of either of the two first of these functions. It is as a market keeper that it gets into trouble. The cars are held unloaded because the railroad terminal is also a market place. The cars are used as warehouses for a period longer than the free time allowed for the same reason. Close the produce yard to all excepting the consignees of freight and there would be no congestion of traffic, no surplus of cars over the capacity of the yard, and no necessity for these high track-storage charges. The abolition of the market would end the use of the cars as warehouses, for there would be no peddling of fruit and vegetables from the car to the consumer or the huckster. Now, this would neither be of advantage to the railroad nor the complainant, for the railroad has gained almost a monopoly of this produce business by maintaining this yard, and the complainant has organized its business to meet this situation, most of the produce commission men in Pittsburg having no selling place or market such as the railroad's yards and cars afford.

Having developed its yard into the sole produce center of the city and of a very considerable surrounding district, the Pennsylvania discovered that its privileges were being so used as to make its present terminal facilities inadequate for the traffic. Accordingly these increased charges were imposed which were paid until the state of Pennsylvania passed a statute attempting to reduce the demurrage or track-storage charges to \$1 a day per car on both interstate and intrastate shipments, which law in the previous opinion we held not to govern interstate business, a view since upheld by the superior court of Pennsylvania, western district. *Pennsylvania Railroad v. Coggins*, 38 Pa. Sup. Ct. Rep. 129.

The railroad is now relying on its right as a common carrier to protect its equipment and its tracks against a local abuse for the origin of which it must in no small part blame itself, if blame is to be attached anywhere. As a common carrier, the defendant pleads that it has the right to impose such charges as will free its yards and cars and will tend to keep down to a minimum their use over and above the two days of free time which is granted as a terminal privilege. In this contention we can not but uphold the carrier. There is no legal right in a consignee of freight to use a car as a warehouse, and no right to use a car or track as a trading place to the embarrassment of the carrier. The carrier has the right to do what it has done—provided in its multiplicity of functions it has not as a carrier effected discrimination against shippers or localities by imposing charges which will free its market place. We do not in any way

recognize the right of a carrier to carry on a business the necessities of which force it to violate any provision of the act to regulate commerce. The Pennsylvania road may not by reason of conducting a market place in Pittsburg use its power as a common carrier to discriminate against or in favor of Pittsburg or any other community which it serves.

In this view of the law we have given consideration to the various causes of complaint raised by the complainants in the cases herein reported upon, and we fail to find any such discrimination in the practices or charges of the defendant as would justify our condemnation. The Pennsylvania road is entitled to have its equipment and tracks freed within a reasonable time, and it may impose charges which will lead to such release as speedily as possible. There is no law which requires a railroad to give its cars and tracks under any terms for use as warehouses. It may be reasonable and within the law for shippers to require certain storage room for freight which is not delivered or not accepted by the consignee, but such provision would in no way meet any of the needs of the Pittsburg produce dealers. What they ask is that the cars and tracks shall be placed at their disposal at "a reasonable rental" for an indefinite time, from which located cars trading may be carried on as from the individual warehouse of a shipper.

That higher track-storage charges are imposed at Pittsburg than at Philadelphia, Buffalo, and Boston does not necessarily lead to any discrimination against the Pittsburg dealer, for this reason: The charge may never be imposed and, as a matter of fact, could not be imposed if the consignee within forty-eight hours unloaded the carrier's equipment. It is a matter wholly within the consignee's control whether such charges are made or not. If consignees unloaded their cars within the free time, as they unquestionably could but for their desire to do a retail produce business in the railroad's yards, there would be no charge of discrimination and no thought that these track-storage charges were an added burden upon traffic. Moreover, conditions are widely dissimilar at these other points. We are here considering a rule born out of the necessities of this particular place.

It appears that shippers have on occasions notified merchants that they would not ship to Pittsburg because these charges were "charged back" to the shipper. It may not be altogether the fault of the railroad that these charges were eventually imposed on the consignor, but that matter will not be discussed, for we are satisfied that if some method is not taken to maintain the produce yard as a railroad terminal, as distinguished from a vegetable and fruit market, Pittsburg produce dealers will find themselves losing a far greater volume of business than the enforcement of the present rules and

charges could possibly affect. Consignors of produce will avoid a city where the yards are incessantly clogged with warehouse cars.

It is true that at other tracks of the defendant in Pittsburg these track-storage charges are not enforced, not being necessary to free the tracks or release equipment. The record shows but the very slightest percentage of such traffic to be handled in other yards, and much of this eventually is transferred for trading purposes to the produce yard. Inasmuch as these charges are imposed only in the event of a longer delay than forty-eight hours, which we regard as a reasonable time for the delivery of such freight at any point in Pittsburg, we confess ourselves unable to see what injurious effect upon the produce yard, or what beneficial effect on the other yards, is caused by the nonobtaining of this charge at those other yards. As a matter of fact it would be of advantage to the carrier if the other yards were so used, and doubtless they would be so used if it were not for the convenience of the produce traders. So long as we can not compel the Pennsylvania road to furnish tracks to carry cars for warehousing purposes and as trading places, we can not deny the carrier the right to impose such charges at its produce terminal as will render that terminal available for the transportation purpose for which it was intended.

The complaint will be dismissed.

16 I. C. C. Rep.

No. 2001.

H. F. WATSON COMPANY

v.

LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY
COMPANY ET AL.

Submitted March 9, 1909. Decided April 13, 1909.

Complaint challenges reasonableness of rates on building and roofing paper from Erie, Pa., to points in Central Freight Association territory, and asks for establishment of rates not to exceed 83½ per cent of the sixth class rates between the same points. Upon defendants agreeing to establish the rates prayed for, complaint is dismissed.

Collin, Wells & Hughes for complainant.

B. S. Warren for Detroit, Toledo & Ironton Railway Company.

Ed. Baxter and *C. B. Northrop* for Southern Railway Company.

F. W. Stevens for Pere Marquette Railroad Company.

Edward Colston for Cincinnati, Hamilton & Dayton Railway Company.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

The complainant in this case challenges the reasonableness of rates on building and roofing paper via the lines of defendant carriers from Erie, Pa., to various points in Central Freight Association territory, and asks for the establishment of rates that shall not exceed 83½ per cent of the sixth class rates between the same points. Reparation in the amount of \$10,000 on past shipments is asked.

The only defendants answering the complaint are the Detroit, Toledo & Ironton Railway Company and its receivers, the Southern Railway Company, the Pere Marquette Railroad Company, and the Cincinnati, Hamilton & Dayton Railway Company and its receiver. Prior to February 15, 1909, the defendants, the Lake Shore & Michigan Southern Railway Company, the New York, Chicago & St. Louis Railway Company, and the Pennsylvania Company agreed to file application for special permission to publish the rates prayed for on less than statutory notice, provided complainant would withdraw

its petition and waive its claim for reparation. On February 15, 1909, pursuant to this agreement, said defendants filed their several applications for permission to publish such rates on less than statutory notice, and on March 1, 1909, these applications were granted. Tariff schedules were filed in accordance with this authority effective March 10, 1909.

The tariffs of the New York, Chicago & St. Louis Railway Company and the Lake Shore & Michigan Southern Railway Company were rejected because they exceeded the authority granted by the Commission, but the Lake Shore & Michigan Southern Railway Company has since filed its tariff in conformity therewith, effective March 23, 1909, and the New York, Chicago & St. Louis Railway Company has concurred therein. The Pennsylvania Company, in accordance with special permission of the Commission, filed a tariff which did not cover all points contained in its application. The failure of the defendants to fully comply with the special authority granted to publish rates on less than statutory notice has been brought to the attention of the complainant, which now renews its motion to dismiss (originally filed on March 9, 1909), stating that it is willing to rely upon the promises of the defendants to properly establish the rates prayed for. Inasmuch as the rate reductions sought by the complainant have substantially been put into effect, the complainant's motion to dismiss will be granted.

16 I. C. C. Rep.

No. 1891.
THATCHER MANUFACTURING COMPANY
v.
NEW YORK CENTRAL & HUDSON RIVER RAILROAD
COMPANY ET AL.

Submitted March 26, 1909. Decided April 13, 1909.

Reparation awarded for unreasonable charges due to misrouting a carload of cullet (broken glass) from New York, N. Y., to Kane, Pa.

Francis E. Baldwin for complainant.

Edgar H. Boles for New York Central & Hudson River Railroad Company.

REPORT OF THE COMMISSION.

LANE, Commissioner:

Complainant alleges that the charge by defendants of 23½ cents per 100 pounds for transporting a carload of cullet (broken glass) from 60th street, New York, N. Y., to Kane, Pa., was unreasonable to the extent that it exceeded 18 cents per 100 pounds. Reparation is asked.

The shipment, weighing 39,309 pounds, was tendered the New York Central Company at 60th street in New York, September 28, 1908; it moved from thence to Buffalo where it was turned over to the Pennsylvania Railroad and carried to destination. Over this route the charge, agreeable to the tariffs of the defendants, from 60th street to Buffalo via the New York Central was 13 cents per 100 pounds; from Buffalo to Kane over the Pennsylvania, 10½ cents per 100 pounds, or a total charge of \$92.36. At the same time there were in effect rates between the same points over another route as follows: 60th to 130th street, New York, 3 cents per 100 pounds; 130th street to Kane, via the New York Central to Canandaigua and the Pennsylvania beyond, 15 cents per 100 pounds, or a total charge of \$70.74. The rate and route have been in effect for a long time and are still in effect.

It is admitted that the shipment was tendered the New York Central at 60th street for transportation to Kane without routing instructions, except that the delivery should be made by the Pennsylvania. Complainant in its prayer asks for the establishment of the 18-cent rate between the points involved. At the hearing complainant admitted that it was perfectly satisfied with the rate and route via Canandaigua and waived the request for the establishment thereof by order of the Commission.

Under the facts it appears that this is a typical misrouting case, governed by the rulings and repeated decisions of the Commission. An order will be issued for the payment of \$21.62 to the complainant by the New York Central & Hudson River Railroad Company, this being the difference between the amount actually collected and the amount that should have been collected at the 18-cent rate had the initial carrier properly routed the shipment.

16 I. C. C. Rep.

No. 1929.
ZELLERBACH PAPER COMPANY
v.
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY.

Submitted January 18, 1909. Decided April 13, 1909.

Complaint challenging reasonableness of carload minimum of 20,000 pounds applied on a carload of paper pails shipped from Chicago, Ill., to San Francisco, Cal., dismissed on motion of complainant.

L. G. Burnett for complainant.

T. J. Norton and *E. W. Camp* for defendant.

REPORT OF THE COMMISSION.

LANE, Commissioner:

Complaint having been made that a carload minimum of 20,000 pounds is unreasonable and unjust as applied to a shipment of paper pails weighing 16,000 pounds made by complainant from Chicago, Ill., to San Francisco, Cal., over the lines of the defendant carrier on May 29, 1908, and alleging damages in the sum of \$54 on account of the application of said carload minimum to the shipment in question, and these allegations having been denied by the defendant, the case came up for hearing before the Commission at San Francisco, Cal., on January 18, 1909, at which hearing further proceedings were suspended pending negotiations between the parties. Such negotiations being had, the complainant now comes and by formal pleadings admits the reasonableness of said carload minimum of 20,000 pounds as applied to the shipment in question and prays dismissal of the complaint.

It is therefore ordered that the complaint in this proceeding be, and it is hereby, dismissed.

No. 1918.

C. D. HENDRICKSON LUMBER COMPANY

v.

KANSAS CITY SOUTHERN RAILWAY COMPANY ET AL.

Submitted March 20, 1909. Decided April 13, 1909.

It appearing that the principal defendant herein, by disregarding its duty to forward the shipment in question by the cheapest reasonable available route, caused complainant to pay a higher rate, an award of reparation is granted with interest.

Israel H. Peres for complainant.

S. W. Moore and *Fred. H. Wood* for Kansas City Southern Railway Company.

E. B. Peirce for Chicago, Rock Island & Pacific Railway Company.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

In tendering to the principal defendant a carload of oak lumber, weighing 60,900 pounds, for transportation from De Queen, in the state of Arkansas, to Memphis, in the state of Tennessee, the complainant gave it no directions as to routing except to request that delivery be made to the consignee at destination on the rails of the Illinois Central Railroad. Instead of hauling the car to Ashdown, in Arkansas, and there turning it over to the Frisco system for carriage to Memphis, over which route a combination rate of 22 cents per 100 pounds was in effect, the principal defendant, disregarding the duty cast upon it by law to forward the shipment by the cheapest reasonably available route, billed the car to Howe, in the state of Oklahoma, and from thence it was taken by the Rock Island system to destination. By either route delivery can be made on the rails of the Illinois Central, but the result of turning the shipment over to the Rock Island was that freight charges aggregating \$182.70 were collected on the basis of the rate of 30 cents in force over the latter route. Had the shipment been forwarded over the Frisco by way of Ashdown the charges would have amounted to only \$133.98,

or \$48.72 less than the complainant was required to pay. The prayer of the petition is for reparation in this amount.

The petitioner is clearly entitled to an award of reparation in the amount demanded, with interest. In fact, as the shipment was made on April 1, 1908, the railroad company ought voluntarily to have adjusted the claim under the authority of the order issued by the Commission on March 18, 1907, and promulgated in Rule 70 of Tariff Circular 15-A. The facts are now stipulated, and the answer of the principal defendant admits its error and the justice of the complainant's demand.

An order will be entered accordingly.

16 I. C. C. Rep.

No. 1478.

PLANTERS GIN & COMPRESS COMPANY ET AL.
v.
YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY.

Submitted December 11, 1908. Decided April 15, 1909.

On complaint alleging that defendant's rates on compressed cotton from Hermanville and Port Gibson, Miss., to New Orleans, La., unduly discriminate against the former point; *Held*, That the rate from Hermanville should not exceed the rate from Port Gibson by more than 2 cents per 100 pounds.

Watkins & Watkins for complainants.

J. M. Dickinson, Charles N. Burch, and C. L. Sivley for defendant.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

This complaint is preferred by shippers of cotton located at Hermanville, Miss., upon a branch of the Yazoo & Mississippi Valley Railroad which extends northeastward from Natchez on the Mississippi River and passes through Hermanville to Jackson. Although the petition puts in issue the reasonableness of the rate on cotton from Hermanville to New Orleans and also to northeastern points such as New York and Boston, at the hearing and in the briefs of counsel for complainants that line of attack was abandoned. The sole issue presented, therefore, is whether Hermanville is subjected to undue discrimination in rates on cotton to New Orleans within the meaning of the third section of the act.

Port Gibson, Miss., is located on the main line of the Yazoo & Mississippi Valley Railroad about 10 miles west of Hermanville and 7 miles from the east bank of the Mississippi River. Both Hermanville and Port Gibson are substantially the same distance from New Orleans, and transportation is over the same rails for the greater part of the distance. When this complaint was filed the rate on cotton from Port Gibson to New Orleans was 22½ cents, and from Hermanville to New Orleans 27 cents. Since then the rate from each

place has been increased 2 cents, making the present rates 24½ and 29 cents, respectively.

There are in fact 3 rates on cotton from Hermanville to New Orleans: (1) \$1.95 per bale uncompressed; (2) \$2.20 per bale, this charge including compressing in transit; for this service the railroad company pays 50 cents per bale, leaving the net rate \$1.70; (3) \$1.45 on compressed cotton. It is this rate of \$1.45 per bale of 500 pounds, or 29 cents per 100 pounds, against which this complaint is directed. The complainant contends that the difference of 4½ cents per 100 pounds in favor of Port Gibson subjects Hermanville to undue and unreasonable disadvantage. It is claimed that the present adjustment enables the Port Gibson shipper to pay about 25 cents more per bale to the cotton grower in the territory between Hermanville and Port Gibson than the Hermanville shipper can afford to pay.

The question presented for determination, therefore, is whether the conditions at Port Gibson are substantially different from those which obtain at Hermanville and justify a discrimination of 4½ cents against the latter.

It is urged by the defendant that water competition of controlling force by the Mississippi River compels it to maintain lower rates at Port Gibson than are accorded Hermanville. As noted above, Port Gibson is about 7 miles from the Mississippi River, and, prior to the building of the railroad, had become a large and thriving town, shipping its cotton by the Mississippi River from the wharf at Grand Gulf Landing. At first the cotton was hauled to the river by teams, but later a small railroad was built by which some of the cotton was carried to the river and thence transported by steamer to New Orleans. This railroad, proving unprofitable, has been torn up. Prior to 1897, when a compress was erected at Port Gibson, there was a fierce contest between the steamboats and the railroad for the Port Gibson cotton. In order to compete more effectively with the river, defendant entered into what was substantially an agreement with Port Gibson shippers to the effect that if they would erect a compress the railroad would make a rate that would enable the cotton to move by rail. The compress was erected, and pursuant to its agreement the railroad put into effect a rate of 20 cents per 100 pounds. In 1906 an increase of 2½ cents was made in the rate from Port Gibson, but no change was made in the rate from Hermanville. On October 1, 1908, the Port Gibson rate was further increased by 2 cents, and the rate from Hermanville was raised by the same amount.

At the present time there is no actual competition by river from any landing accessible to Port Gibson. A line of steamers plies between Vicksburg and New Orleans, making weekly trips, and there are some irregular boats. At present, however, these boats do not

stop at the landing near Port Gibson. In this connection it should be noted that several years ago the Mississippi receded about 2 miles from the landing at Grand Gulf. This, of course, renders the possibility of steamboat competition that much more remote.

It is well established that water competition at a given point may render the circumstances substantially dissimilar and justify a discrimination against points where such competition is not controlling. It is to be observed, however, that such dissimilarity of circumstances does not relieve the carrier altogether from the restraint of the third section. In the case of *Louisville & Nashville R. R. Co. v. Behlmer*, 175 U. S., 648, the court says:

It follows that whilst the carrier may take into consideration the existence of competition as the producing cause of dissimilar circumstances and conditions, his right to do so is governed by the following principles: First. The absolute command of the statute that all rates shall be just and reasonable, and that no undue discrimination be brought about, though, in the nature of things, this latter consideration may in many cases be involved in the determination of whether competition was such as created a substantial dissimilarity of condition. Second. That the competition relied upon be not artificial or merely conjectural, but material and substantial, and thereby operating on the question of traffic and rate making, the right in any event to be only enjoyed with a due regard to the interest of the public, and giving full weight to the benefits to be conferred on the place from whence the traffic moved as well as those to be derived by the locality to which it is to be delivered.

If, therefore, water competition at a given point compels a carrier to discriminate in rates against a point not so favorably situated, the amount of the discrimination must not be greater than the dissimilarity of circumstances demand. *Marten v. Louisville & Nashville R. R. Co.*, 9 I. C. C. Rep., 581.

There is another view to take of this matter arising out of the relation between the rates upon uncompressed and compressed cotton at Port Gibson and Hermanville. The uncompressed rate per bale at Port Gibson is \$1.85, or 2 cents per 100 pounds less than the rate upon uncompressed cotton from Hermanville, while the rate upon compressed cotton is 4½ cents per 100 pounds greater at Hermanville than at Port Gibson. Under the facts developed in this record, and giving due weight to the relative distance of Port Gibson and Hermanville from the river and the possibility of actual water competition developing thereon, we are of the opinion that the rate from Hermanville upon compressed cotton should not exceed the rate from Port Gibson upon compressed cotton by more than 2 cents per 100 pounds.

Reparation will not be awarded, and an order will be made in accordance with this finding.

No. 1510.

OZARK FRUIT GROWERS ASSOCIATION

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY ET AL.

Submitted March 1, 1908. Decided April 15, 1909.

1. Rates for the transportation of apples via defendants' lines from the Ozark fruit region in Arkansas and Missouri to St. Louis and Kansas City, Mo., and to points in Tennessee, South Carolina, Georgia, Florida, Alabama, Mississippi, and Louisiana found not unreasonable.
2. Minimum weight applicable on carload shipments of apples via defendants' lines found not unreasonable.
3. Rates for the transportation of apples via defendants' lines from the Ozark fruit region to points in Oklahoma and Texas found unreasonable. Reasonable rates prescribed for the future.

McGill & Lindsey for complainant.

E. B. Peirce for St. Louis & San Francisco Railroad Company and Chicago, Rock Island & Pacific Railway Company.

M. L. Clardy and *J. C. Jeffery* for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.

S. W. Moore and *F. H. Wood* for Kansas City Southern Railway Company and Texarkana & Fort Smith Railway Company.

G. L. Trimble for Missouri & North Arkansas Railroad Company.

S. F. Andrews for Illinois Central Railroad Company; Yazoo & Mississippi Valley Railroad Company; Seaboard Air Line Railway; Southern Railway Company; Georgia Southern & Florida Railway Company; Cincinnati, New Orleans & Texas Pacific Railway Company; Mobile & Ohio Railroad Company; Nashville, Chattanooga & St. Louis Railway Company; and New Orleans & Northeastern Railroad Company.

REPORT OF THE COMMISSION.

LANE, Commissioner:

The foothills of the Ozark Mountains have within a few years been transformed from a thinly settled and but slightly productive district into a rich and highly cultivated fruit belt. This zone

extends for a distance of approximately 200 miles north and south and perhaps 150 miles from east to west in southwestern Missouri and northwestern Arkansas. The fruit produced is of excellent quality and readily makes a market for itself wherever freight rates will permit it to be placed on sale. The shippers of fruit in the Ozark region have formed an association, which has complained to the Commission that many of the markets at both distant and near-by points are practically closed to them because of prohibitive rates and the present petition deals with the rates and carload minimum applicable to shipments of apples from several hundred producing points in Arkansas and Missouri to St. Louis and Kansas City, Mo.; Memphis, Tenn.; Columbia and Greenville, S. C.; Columbus, Savannah, Atlanta, Albany, Athens, and Americus, Ga.; Tampa and Jacksonville, Fla.; Mobile and Birmingham, Ala.; Gulfport, Vicksburg, Jackson, Natchez, Greenville, and Tupelo, Miss.; New Orleans, Lake Charles, and Shreveport, La.; Beaumont, Houston, Dallas, Paris, and Texarkana, Tex.; and Oklahoma City and Chickasha, Okla. The rates are set out in detail in the complaint and vary from 15 cents to 73 cents for 100 pounds in carloads. It is alleged:

(1) That these rates are unreasonable and that they unjustly discriminate against complainant because lower rates are charged to northern markets; that lower rates are charged from other apple-producing sections to their markets; and that they unjustly discriminate by comparison with the rates on live stock. Complainant claims that reasonable and just rates would be as follows:

From—	Cents.
Arkansas points to Texas common points.....	30
Southwest Missouri points to Texas common points.....	34
Missouri and Arkansas points to Oklahoma markets.....	25
Arkansas points to Louisiana markets.....	30
Missouri points to Louisiana markets.....	34
Missouri and Arkansas to Mississippi markets.....	34
Missouri and Arkansas to Alabama markets.....	34
Missouri and Arkansas to Georgia markets.....	38
Missouri and Arkansas to South Carolina markets.....	40
Missouri and Arkansas to Florida markets.....	40
Arkansas points to St. Louis.....	20
Springfield, Mo., to St. Louis, including all points south of Springfield and west.	15

It is urged that all points between St. Louis and Springfield should have rates based proportionately on those quoted above.

(2) That defendants assess rates per package and that the estimated weight of such package is in excess of the actual weight.

(3) That the minimum of 24,000 pounds should be reduced to 20,000.

At the taking of testimony complainant waived the matter of minimum in other than refrigerator cars, but contended as to these that the minimum should be 20,000 pounds. The position of the complainant is shown by the following answers of one of the principal witnesses for complainant:

Question. So far as the complaint against the minimum is concerned you waive the complaint as to all apples except those shipped in refrigerator cars under refrigeration?

Answer. Yes, sir.

Question. And as to these shipped under refrigeration you wish to reduce the minimum of 24,000, and the reason is not that you can not load 24,000 pounds but that you can not sell them to advantage?

Answer. Yes; that is it.

A carrier has the right to establish a minimum on carload shipments as high as will permit the commodity to be safely carried without injury. There is no duty upon the carrier to establish this minimum at such an amount as the consignee or purchaser decides is advantageous for him. In other words, the minimum should be established with relation to the capacity of the car and not to the needs or desires of the purchasers of the product. We therefore will make no reduction in the minimum.

In regard to the second ground of complaint—that while the tariffs quote rates per 100 pounds, they also provide an estimated weight of so much per package, which is in excess of the actual weight—we find, upon examination, that the tariffs provide an estimated weight of 50 pounds for a package of apples, of certain dimensions therein set forth. No testimony whatever was presented as to this feature of the complaint, but some evidence was given to the effect that barrels of apples were estimated at 160 pounds while they weighed less. The tariffs make no provision of any kind fixing an estimated weight on a barrel of apples, and if carriers are using that method it is illegal and without authority, and the shipper may demand that his apples be weighed. Representatives of carriers at the hearing stated that their companies were shipping apples by actual weights, and if they were not the remedy of the shipper as above pointed out is plain. We will therefore make no order as to the estimated weight of the package.

We come now to consider the reasonableness of the rates. The points of destination seem to divide themselves into certain groups:

- (a) St. Louis, Kansas City, and Memphis.
- (b) Louisiana points.
- (c) Points in the southeast—Mississippi, Alabama, Georgia, South Carolina, and Florida.
- (d) Oklahoma.
- (e) Texas.

From—Rate—		To Dallas, Tex.			To Oklahoma City, Okla.		
From—	Rate—	Distance.	Rate—		Distance.	Rate—	
	Per ton per mile.		Per 100 pounds.	Per ton per mile.		Per 100 pounds.	Per ton per mile.
MISSOURI		Miles.	Cents.	Cents.	Miles.	Cents.	Cents.
Newburg.....	.91	563	62	2.20	424	69	3.25
Crocker.....	.94	503	62	2.46	402	68	3.38
Phillipsburg.....	1.01	550	62	2.25	349	63	3.61
Marshfield.....	1.04	569	62	2.18	330	61	3.69
Dublin.....	1.08	447	62	2.77	308	45	2.92
Rogersville.....	1.06	460	62	2.69	321	45	2.80
Diggins.....	1.03	473	62	2.62	334	45	2.69
Seymour.....	1.02	478	62	2.59	339	45	2.64
Cedar Gap.....	1.02	484	62	2.56	345	45	2.60
Mansfield.....	1.01	430	62	2.53	351	45	2.56
Brandsville.....	.91	566	62	2.19	427	45	2.10
ARKANSAS							
Mammoth Spring	.88	583	62	2.12	444	70	3.15
MISSOURI							
Hutton Valley.....	.94	448	62	2.79	400	45	2.25
Springfield.....	1.08	443	62	2.80	304	59	3.88
Republic.....	1.10	429	62	2.89	290	58	4.00
Monett.....	1.17	399	62	3.10	260	55	4.23
Carthage.....	1.10	430	62	2.88	257	54	4.20
Miller.....	1.10	433	62	2.86	294	58	3.94
KANSAS							
Pittsburg.....	1.10	464	62	2.67	254	54	4.25
MISSOURI							
Waco.....	1.08	478	62	2.59	268	55	4.10
Webb City.....	1.08	443	62	2.80	244	52	4.26
Pilgrim.....	1.07	444	62	2.79	311	60	3.86
Purdy.....	1.18	407	62	3.03	302	59	3.90
Exeter.....	1.20	418	62	2.96	279	56	4.01
ARKANSAS							
Osborne.....	1.16	433	62	2.86	294	45	3.06
KANSAS							
Morse.....	.90	611	62	2.03	464	39	1.68
MISSOURI							
Coleman.....	.88	571	62	2.17	442	39	1.76
Collins.....	.78	499	62	2.48	358	39	2.18
Garden City.....	.86	563	62	2.20	422	39	1.84
ARKANSAS							
Fort Smith.....	1.64	255	53	4.15	339	45	2.65
General average	1.03	478	61.7	2.56	338	51.9	3.07

The rates to St. Louis, Kansas City, and Memphis are much lower than those into Texas and Oklahoma and are doubtless the result of an effort on the part of the carriers to meet competition in apples from producing territory to the north and east, and there is nothing in this record that tends to show that these rates are unreasonably high.

The same may be said of the rates to Louisiana, which were evidently made to meet the competition caused indirectly by water lines, and a very slight reduction is asked. We see no reason to change these rates.

The rates to the southeast are made by adding the rate to Memphis and the rate from Memphis to points beyond. The rates beyond on all commodities bear a fixed relation to rates from Louisville and other Ohio River crossings to the same destinations, being 4 cents less in the case of apples. This relation of rates has been in effect for many years and it is generally conceded that a change at any of the crossings, such as Memphis, would immediately and automatically result in a like change from Louisville and other crossings. Rates on apples into this southeastern territory are controlled by lines crossing the Ohio and Potomac rivers, from both of which directions large quantities of fruit enter the southeastern market. To make any radical change in the rates from Missouri and Arkansas into the southeastern section named would result in a complete revolution of apple rates from all other sections into the same territory and we are of opinion, upon the evidence submitted, that we would not be justified in making an order that would be so far-reaching.

The members of the complainant corporation are very advantageously situated as to the Oklahoma and Texas markets, and we think that in that territory they and the consumers are entitled to some relief from existing rates.

From Missouri and Arkansas to Oklahoma points, the rates are practically on a mileage basis, being 13 cents for 25 miles, 28 cents for 100 miles, 45 cents for 190 miles, 49 cents for 220 miles, and so on up to 70 cents for 450 miles, the rate changing every 5 miles up to 200 and every 10 miles above that figure. However, there is a broad exception to this mileage tariff. St. Louis & San Francisco Tariff, I. C. C. No. 4659, Supplement No. 19, provides a maximum rate of 49 cents from about 125 points in Arkansas and Missouri to about 200 points in Oklahoma. To some of these points the rate is as low as 45 cents. The complaint covers many points not included within this exception, and therefore the mileage tariff, which is higher, applies from and to such points.

To set forth in detail the rate between all points of origin and all points of destination would require several pages of figures. Springfield, Mo., and Van Buren, Ark., are representative points of origin

in these states on shipments to Texas; and Waco, San Antonio, Mineola, and Dallas are representative points of destination in Texas common-point territory. In the table below will appear the distance, the rate, and the rate per ton per mile from Springfield and Van Buren to these points.

Rates on apples, to Texas points.

From—	To Waco.			To San Antonio.			To Mineola.			To Dallas.		
	Distance.	Rate.		Distance.	Rate.		Distance.	Rate.		Distance.	Rate.	
		Per 100 pounds.	Per ton per mile.		Per 100 pounds.	Per ton per mile.		Per 100 pounds.	Per ton per mile.		Per 100 pounds.	Per ton per mile.
Springfield, Mo.....	Miles. 626	Cts. 62	Mills. 19.8	Miles. 814	Cts. 62	Mills. 19.0	Miles. 448	Cts. 62	Mills. 27.9	Miles. 526	Cts. 62	Mills. 23.6
Van Buren, Ark.....	442	53	23.9	630	53	16.8	330	53	32.1	342	53	31.2

To illustrate the rates from Arkansas and Missouri to Oklahoma points with the distances and the rates which prevail according to the mileage tariff and the exceptions thereunder, we have selected Springfield as one of the points from which strict mileage rates apply, and Seymour, Turner, and Cedar Gap as points coming under the exception (from which generally lower rates apply), and in the table below are the distances, the rates, and the rate per ton per mile:

From—	To—	Distance.	Rate.	
			Per 100 pounds.	Per ton mile.
Springfield, Mo.....	Lawton, Okla.....	<i>Miles.</i> 392	<i>Cents.</i> 67	<i>Mills.</i> 34.1
Seymour, Mo.....	do.....	427	49	23.0
Springfield, Mo.....	Ade, Okla.....	310	59	33.1
Turner, Mo.....	do.....	320	45	28.1
Springfield, Mo.....	Avard, Okla.....	364	65	35.7
Cedar Gap, Mo.....	do.....	405	48	23.6
Springfield, Mo.....	Indianhomoe, Okla.....	414	68½	33.1
Seymour, Mo.....	do.....	449	49	21.8

The following table shows the distances, the rates, and rate per ton per mile from Chicago, Ill., Richmond, Va., Huntington, Oreg., and Rochester, N. Y., to points of destination named:

	Distance.	Rate.	
		Per 100 pounds.	Per ton per mile.
From Chicago, Ill., to—	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>
Blair, Nebr.....	481	27	11.2
Fremont, Nebr.....	504	30	11.9
Norfolk, Nebr.....	585	40	13.6
Clearwater, Nebr.....	629	45	14.8
From Richmond, Va., to—			
Albany, Ga.....	692	35	10.1
Charleston, S. C.....	396	30	15.1
Adamsville, Ala.....	725	56	15.4
Hillard, Ala.....	760	62	16.8
From Huntington, Oreg., to—			
Park City, Utah.....	541	60	22.1
Cheyenne, Wyo.....	879	75	17.0
Omaha, Nebr.....	1,395	75	10.7
Denver, Colo.....	985	75	15.2
From Rochester, N. Y., to—			
Chicago, Ill.....	563	21	7.4
St. Louis, Mo.....	807	25	6.2
Toledo, Ohio.....	364	16	8.8
Louisville, Ky.....	609	21	6.9

The following table shows distances, rates, and rates per ton per mile from points of origin named and destination points set forth in above tables:

Origin.	Destination.	Average distance.	Average rate.	Average rate per ton per mile.
		<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>
Rochester, N. Y.....	West.....	586	20.75	7.04
Chicago, Ill.....	Nebraska points.....	545	35.50	12.90
Richmond, Va.....	South.....	643	45.75	14.20
Huntington, Oreg.....	East.....	950	71.25	15.00
Springfield, Mo.....	Texas points.....	603	62.00	20.60
Seymour, Mo.....	Oklahoma.....	359	45.00	25.00
Van Buren, Ark.....	Texas.....	438	53.00	24.30
Turner, Mo.....	Chickasha.....	355	49.00	27.60
Springfield, Mo.....	do.....	345	63.00	36.50
Do.....	Oklahoma.....	304	59.00	35.50

While appreciating that the circumstances and conditions surrounding the carriage of apples into Oklahoma and Texas are necessarily different from those obtaining in the other sections referred to, yet they are not so widely different as to justify as wide a spread as now prevails. The apple industry in Missouri and Arkansas is one of large proportions and is on the increase, while the volume of traffic into Oklahoma and Texas is increasing at a rate not exceeded in any other section of the country. We therefore feel that there should be some reduction in these rates, and for the future we find that rates should not exceed the following:

From Missouri and Arkansas into Oklahoma for distances in excess of 220 miles and less than 320 miles, 40 cents, and for 320 miles and over, 45 cents per 100 pounds.

From Missouri producing points to Texas common points, 55 cents instead of the present rate of 62 cents, and from Arkansas, 45 cents instead of the present rate of 53 cents.

This reduction into Oklahoma for distances in excess of 220 miles will necessitate a readjustment of the mileage tariff on apples, as that tariff now provides rates from 40 to 49 cents for distances from 160 to 220 miles. The Commission will not, at this time, fix rates for distances under 220 miles, leaving the adjustment to the carriers, providing only that the rates shall graduate to the 40-cent rate at 220 miles.

While the complainant names only Beaumont, Houston, Dallas, Paris, and Texarkana, in Texas, yet the intent is to have the same rates at all Texas common points, and we presume that the carriers will make effective the rates throughout the common-point territory. The rates to Paris and Texarkana are now lower than the rates herein prescribed and therefore will not be affected by this opinion.

These rates produce a revenue of 16.6 mills per ton mile for a haul of 600 miles into Texas from Missouri, 20 mills from Arkansas, and from 36.4 to 18 mills to Oklahoma destinations from 220 to 450 miles from points of origin.

At the time the evidence in this case was submitted there were heard two other cases concerning rates on strawberries and peaches by the same complainant against many of the same defendants. These fruits are transported solely in refrigerator cars where the tare weight is much greater than in the shipment of apples in box cars, and several tons of ice is carried without extra charge. They are also shipped under refrigeration and the trains move at practically passenger-train speed, in order to reach the markets with the fruit in good condition. The rates voluntarily charged by the carriers for this expensive service under refrigeration are as follows:

To—	From Springfield, Mo.						From Fort Smith, Ark.					
	Strawberries.			Peaches.			Strawberries.			Peaches.		
	Distance.	Rate per 100 pounds.	Earnings per car.	Rate per ton per mile.	Rate per 100 pounds.	Earnings per car.	Distance.	Rate per 100 pounds.	Earnings per car.	Rate per ton per mile.	Rate per 100 pounds.	Earnings per car.
		Cts.		Mills.	Cts.			Cts.		Mills.	Cts.	
Kansas City, Mo.....	202	39	\$66.30	38.6	35	\$70.00	34.6	336	59	\$100.30	35.1	40
Omaha, Nebr.....	344	55	93.50	27.9	47	94.00	23.9	528	77	130.90	29.1	51
St. Louis, Mo.....	239	47	79.90	39.3	40	80.00	33.5	415	59	100.30	28.4	44
Chicago, Ill.....	524	50	100.30	22.5	49	98.00	18.7	701	80	136.00	22.8	55
Denver, Colo.....	835	115	230.00	27.5	80	160.00	19.2	967	115	230.00	23.8	80

From this table it will be seen that the rate per ton per mile voluntarily established by the carriers on strawberries and peaches is about equal to that here prescribed for apples. And in round figures, for substantially the same distances, the carriers earn about \$100 per car on the strawberries and peaches and under the rates herein prescribed from \$96 to \$120 on apples. We are aware that these shipments are in opposite directions, but considering that strawberries and peaches move under refrigeration and at high speed, while apples move in ordinary trains in box cars, we think the rates prescribed not unreasonably low for the service rendered.

One of the traffic officials at the hearing testified that 49 cents was the rate for all distances in excess of 220 miles, and while we find that the tariffs do not entirely substantiate this statement, we have made the new rates on that basis.

As the number of points of origin and of destination is very great, we will at this time enter no order fixing the rate between particularly designated points, but will leave the matter for adjustment by the carriers in accordance with the views herein expressed, in the hope that they will see proper to give practical effect to the decision as they have done in other cases. The case will be kept upon the docket, and if tariffs have not been filed substantially in compliance herewith by June 1, 1909, the matter will receive further consideration and rates will be fixed definitely.

16 I. C. C. Rep.

No. 1043.

INDIANAPOLIS FREIGHT BUREAU

v.

CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS
RAILWAY COMPANY ET AL.

Submitted April 30, 1909. Decided May 3, 1909.

Complainant challenges the legality of rates from Indianapolis to points throughout the southern States and asks that Indianapolis be placed upon the same rate basis as Cincinnati, Ohio. It appearing that since the filing of the complaint the rate adjustment desired has been substantially put into effect by defendants, complaint is dismissed.

Edward E. Gates and *W. A. Ketcham* for complainant.

O. E. Butterfield for Cleveland, Cincinnati, Chicago & St. Louis Railway Company, and Lake Erie & Western Railroad Company.

John G. Williams and *Samuel O. Pickins* for Pittsburg, Cincinnati, Chicago & St. Louis Railway Company and Vandalia Railroad Company.

George W. Kretzinger for Chicago, Indianapolis & Louisville Railway Company; Cincinnati, Hamilton & Dayton Railway Company, and Judson Harmon, receiver.

E. B. Peirce for Evansville & Terra Haute Railroad Company and Southern Pacific Company.

S. F. Andrews for Illinois Central Railroad Company; Cincinnati, New Orleans & Texas Pacific Railway Company; Alabama Great Southern Railroad Company; New Orleans & Northeastern Railway Company; Mobile & Ohio Railroad Company; and Southern Railway Company.

B. M. Flippin for St. Louis, Iron Mountain & Southern Railway Company.

F. A. Leland for Missouri, Kansas & Texas Railway Company.

John E. Hollett for Commercial Club of Indianapolis, intervener.

C. C. Hanch for Manufacturers' Association of Indianapolis, intervener.

H. C. Atkins for Board of Trade of Indianapolis, intervener.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

This complaint challenges the legality of rates on a large number of commodities from Indianapolis to various points throughout the southern states. It is alleged that the rates from Cincinnati and Chicago to these points in the south are materially lower than the rates from Indianapolis. This rate adjustment is attacked upon the ground that it is unduly discriminatory against Indianapolis. It is also urged that the rates are unjust and unreasonable *per se*. The complainant asks generally that Indianapolis be accorded the same rates as the city of Cincinnati now enjoys.

Since the filing of this complaint it appears that its most important features have been satisfied by the defendants. Indianapolis has been given the same commodity rates to lower Mississippi River pro-rating points, viz, Memphis, Tenn., and New Orleans, La., as now obtain from Cincinnati. Dry-kiln outfits are now accorded the same rates as apply on commodities covered by defendants' "Special Iron List." The rate adjustment desired by the complainant on traffic from Indianapolis to various points in Louisiana and Texas, reached by the Texas & Pacific Railway Company and Morgan's Louisiana & Texas Railroad & Steamship Company, have been established by the Illinois Central Railroad Company in conjunction with the Indianapolis Southern Railway. The same carriers have partially satisfied that portion of the complaint attacking the rates to various interior points in Tennessee and Mississippi, and it appears that further negotiations will lead to an acceptable adjustment.

It appearing to the Commission that the ends sought by the complainant in this proceeding have been substantially attained, the complainant's motion to dismiss will be granted.

16 I. C. C. Rep.

No. 1789.
DE CAMP BROTHERS ET AL.
v.
SOUTHERN RAILWAY COMPANY ET AL.

Submitted March 6, 1909. Decided May 4, 1909.

1. Defendants' rate for the transportation of pig iron in carloads from Sheffield, Ala., to Hutchinson, Kans., effective August 2, 1906, not found unreasonable.
2. Because a delivering carrier sees fit to state that it will protect a rate made by its competitor, but fails to do so, the Commission can not hold that such lower rate is necessarily reasonable. It will take some other evidence in order to justify the Commission in holding an existing rate unreasonable than the mere statement two years ago of one of the connecting carriers that it will protect a rate made by one of its competitors.

Alexander Yule for complainants.

James Peabody for Atchison, Topeka & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

COCKRELL, *Commissioner*:

On August 2, 1906, complainants shipped from Sheffield, Ala., to Hutchinson, Kans., via the Southern Railway, Mobile & Ohio, and the Atchison, Topeka & Santa Fe, 1 carload of pig iron weighing 25 tons, and were charged at the rate of \$7.84 per ton, in accordance with the published tariffs then in effect via these lines. This made a total charge of \$196. At the same time the Louisville & Nashville Railroad, via its connections, had in effect a rate between the same points of \$6.39.

Before shipping, complainants communicated with the freight representative of the Atchison, Topeka & Santa Fe in St. Louis, who agreed both by telephone and in writing to make a rate of \$6.39 via his line in connection with the Mobile & Ohio. Thereupon the shipment was made.

As a matter of fact, neither the Mobile & Ohio nor the Southern was communicated with, and there never was published via those

lines a rate of \$6.39. At the time of the shipment it was the practice of carriers, generally, to protect the lowest rate in effect via any line, without publishing the rate. This is what the Santa Fe's representative intended. It does not follow that when this practice prevailed, because the carrier made such rate on account of competition, that it was necessarily an admission that the rate was reasonable.

On March 1, 1906, the rate via both the Mobile & Ohio and its connections and the Louisville & Nashville and its connections was \$7.84. On June 19, 1906, the Louisville & Nashville made effective the rate of \$6.39, and raised that rate to \$6.64 on February 1, 1907. During all this time the rate via the Mobile & Ohio and its connections remained at \$7.84. At the present time the rate via both roads, and all roads so far as we are able to ascertain, is \$8.09, which last rate became effective July 1, 1908. Complainants claim that they are entitled to receive as reparation the difference between the sum actually charged (25 tons, at \$7.84), \$196, and what would have been charged at the rate of \$6.39, \$159.75, or \$36.25.

In order to grant this reparation, it is necessary that the Commission should find the rate of \$7.84 unreasonable. It appears from the testimony that neither the Mobile & Ohio nor the Southern Railway was consulted as to the advisability of putting in effect a rate of \$6.39, and that they moved the freight with no other idea than to receive their divisions of the \$7.84 rate. We further find from an examination of the tariffs that this rate was in line with rates to points surrounding Hutchinson. To hold now that \$6.39 was and is the reasonable rate to Hutchinson would be in effect to hold that a like reduction should be made to all other points in that territory, taking substantially the same rate under the same circumstances and conditions, but we do not feel that, because a delivering carrier like the Santa Fe sees fit to state that it will protect a rate made by its competitor, but fails to do so, we can thereupon hold that such a rate is necessarily reasonable. In other words, it will take some other evidence in order to justify the Commission in holding an existing rate unreasonable than the mere statement two years ago of one of the connecting carriers that it will protect a rate made by one of its competitors.

As stated, since this shipment moved the rate to Hutchinson has been increased, and the tariffs show that there has been a like increase to all surrounding points. To hold now that this \$6.39 rate is reasonable would have the effect of reducing all these rates to a like standard, and there is no such showing here as would justify us in holding that the rate charged was unreasonable.

The complaint will be dismissed.

No. 1743.

C. H. RODEHAVER

v.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY.

Submitted March 23, 1909. Decided May 4, 1909.

The Missouri Commission Company received 82,000 pounds of hay shipped over defendant's line from a station in Kansas to St. Louis, Mo.; paid 19 cents per 100 pounds, and sold the hay to its customer; the Bartlett Commission Company received 82,000 pounds of hay shipped from points in Illinois, Iowa, and Missouri over lines other than defendant's at St. Louis, Mo., and reconsigned the same to points east of the Mississippi River and south of the Ohio River. The complainant obtained the expense bills of the Missouri Commission Company and the duplicate bills of lading of the Bartlett Company, presented them to the defendant and demanded refund to the amount of 13½-cent rate by reason of defendant's tariff, which "applies on hay, C. L., from stations in Missouri, Kansas, and Indian Territory on the M. K. & T. Ry. to St. Louis for reconsignment to points south of the Ohio River and east of the Mississippi River at proportional rates shown on page 2 of the schedule;" *Held*, That the complainant was not entitled to any refund or reparation in such a case, and that such substitution of tonnage could not be sanctioned.

D. D. Currie for complainant.

James Hagerman and *J. M. Bryson* for defendant.

REPORT OF THE COMMISSION.

COCKRELL, Commissioner:

Complainant is in the brokerage and commission business at St. Louis, Mo., and in his petition claims that there were shipped via defendant's lines from Hepler, Kans., to St. Louis, Mo., 4 carloads of hay, aggregating 82,000 pounds, in June, 1907, and the rate of 19 cents per 100 pounds charged thereon amounted to \$157, all being consigned to the Missouri Commission Company, at St. Louis, but not stating the name of the consignor or shipper; and that at four different dates in July, 1907, the Bartlett Commission Company shipped from East St. Louis, via the Mobile & Ohio Railroad, to points in the territory east of the Mississippi River and south of the Ohio River, 4 carloads of hay, weighing 82,000 pounds, and that, according to defendant's tariff, the charges on hay shipped to St.

Louis or East St. Louis, via defendant's lines, from stations in Kansas and reconsigned in six months to points in the territory east of the Mississippi River and south of the Ohio River, were 13½ cents per 100 pounds, and the defendant concurred in said tariff and was bound thereby to refund all the charges over said 13½-cent rate upon presentation of its original expense bills and evidence of reconsignment to points in said southeast territory; that there have been transferred to the complainant the defendant's expense bills for said 4 carloads of hay so shipped from Hepler, and the duplicate bills of lading showing that 82,000 pounds of hay were shipped to the southeast territory via the Mobile & Ohio Railroad, and that complainant is entitled to recovery of any money due as a refund under said tariff, and that said expense bills and duplicate bills of lading were duly presented and refund of \$46.30, the excess amount over the 13½-cent rate, demanded of and refused by the defendant.

The defendant in its answer admits the shipments in June, 1907, as charged, and avers that said cars of hay were consigned to, and sold and disposed of by, the Missouri Commission Company, 3 being sold to the National Stock Yards at East St. Louis and the fourth being reconsigned to a point on the Cleveland, Cincinnati, Chicago & St. Louis Railroad. Defendant further avers that the 4 carloads of hay shipped to the southeast in 1907 were shipped by an entirely different company, the Bartlett Commission Company, from a warehouse in East St. Louis, and that none of these 4 cars of hay originated on or moved over any of its lines or any part thereof, but on the contrary were shipped from points in Illinois, Iowa, and Missouri, over other railway lines and had been placed in the East St. Louis warehouse by the Bartlett Commission Company, and that complainant presented the duplicate bills of lading covering the 4 cars so shipped by said Bartlett Commission Company, and demanded a refund of a part of the rate charged on the 4 cars of hay shipped from Hepler, Kans., to St. Louis and so sold and disposed of by the Missouri Commission Company. Defendant then quotes the ruling of this Commission under the heading of "Substituting tonnage at transit point," adopted June 25, 1908, to justify its refusal.

The tariff referred to by the complainant and the defendant "applies on hay, C. L., from stations in Missouri, Kansas, and Indian Territory, on the Missouri, Kansas & Texas Railway Company, to St. Louis for reconsignment to points south of the Ohio River and east of the Mississippi River at proportional rates shown on page 2 of the schedule," and contains special notice conditions, as follows:

In order to insure the application of the rates published in this schedule, shipments must be consigned to St. Louis or East St. Louis, and charges paid at rates shown in tariff 2661, I. C. C. A-1732, or reissue. All charges thus paid in excess of the rates herein provided will be refunded upon the presentation of the original M., K. & T.

expense bills, and evidence of reshipment to the territory described on the title-page of the schedule. Evidence of reshipment will be accepted in the form of signed duplicate bills of lading of the lines carrying the hay out of St. Louis or East St. Louis, which bills of lading must show the shipments to consist of hay and include the number and initial of the car in which the outbound shipment was loaded. In the case of shipments reconsigned on tracks in St. Louis or East St. Louis, which are not unloaded in warehouses, the number and initials of the cars in the bills of lading must be identical with those shown in the expense bills covering the inbound shipment.

Expense bills must invariably antedate bills of lading, but no refund will be made on shipments which are not reconsigned within six months after the date of the expense bill.

The Commission, in answer to an inquiry from complainant's attorney as to a hearing, wrote him fully, stating the substance of the complaint and of the answer and quoting the substituting tonnage ruling of the Commission and also quoting tariff provisions hereinbefore referred to, and then said:

Now then, while no pleadings are required to an answer in the way of a replication, yet here matters are pleaded practically in bar of your claim, and the Commission would be glad to hear from you as to whether the statements of the defendant are true and correct, and if so, upon what ground you base your right to recover.

Complainant's attorney replied that he made the inquiry believing that the defendant's answer did not state facts sufficient to constitute a defense to complainant's complaint, and that he understood that refunds had been made to other shippers under like circumstances, based upon the tariff in question.

The Commission replied, referring to former letter, and again asking a specific answer to the inquiry therein contained.

Thereupon the complainant's attorney admitted that there was no dispute as to the facts and expressed willingness that the case be decided upon the pleadings. Upon the facts so admitted, the Commission concludes that the complainant has no right to any reparation or refund in this case, and the case should therefore be dismissed.

No. 1565.
LA SALLE PAPER COMPANY
v.
MICHIGAN CENTRAL RAILROAD COMPANY ET AL.

Submitted March 31, 1909. Decided May 4, 1909.

1. Defendants' rate on paper stock from Chicago, Ill., to South Bend, Ind., not found unreasonable as compared with their rate on manufactured paper between the same points.
2. The Commission can not order a reduction on paper stock in order to meet market competition, as railroads are authorized to meet or not to meet competition, as to them seems to their interest.

No appearance for complainant.

R. J. Cary for Michigan Central Railroad Company and Lake Shore & Michigan Southern Railway Company.

REPORT OF THE COMMISSION.

COCKRELL, *Commissioner*:

The rate on paper stock from Chicago to South Bend, Ind., is 8 cents per 100 pounds, and on manufactured paper from South Bend to Chicago, 6 cents. It is claimed that the rate on paper stock is unreasonable.

From August 31, 1903, to May 28, 1907, the rate on paper stock from Chicago to South Bend was 6 cents, with a minimum of 24,000 pounds, or \$14.40 per car. The rate from Chicago to Beloit, Wis., 91 miles; is 5 cents, with a minimum of 30,000 pounds, or \$15 per car, compared with the Chicago-South Bend rate of 8 cents for 86 miles, with a minimum of 20,000 pounds, or \$16 per car, while the minimum on paper is 36,000 pounds which, at the rate of 6 cents, makes \$21.60 per car. The defendants explained the higher rate on raw material than the manufactured product as growing out of the meeting of competition on manufactured product and not on paper stock.

Paper is manufactured at South Bend and also at St. Joseph, Mich. The latter town, being located on the eastern shore of Lake Michigan, opposite Chicago, is served by a boat line and by the Pere Marquette Railroad. The boat line makes a rate of 6 cents on paper stock and

manufactured paper and the Pere Marquette Railroad meets that competition. The railroads serving South Bend are not the same as those serving St. Joseph. The defendants in order to enable the manufacturer at South Bend to compete with the manufacturer at St. Joseph, have put in effect a 6-cent rate between South Bend and Chicago. It declines to meet the competition on the paper stock from Chicago.

So far as this matter is dependent upon competition, the Commission could not order a reduction of the rate on paper stock to meet that condition, as railroads are authorized to meet or not to meet competition, as to them seems to their interest. However, the reasonableness of the rate itself is attacked in this proceeding and we find the rate on paper stock for comparatively similar distances between points in this locality are as shown in the table below.

From Chicago to—	Distance.	Rate per 100 pounds.	Minimum weight.	Earnings per car.
	<i>Miles.</i>	<i>Cents.</i>	<i>Pounds.</i>	
South Bend, Ind.....	86	8	20,000	\$16.00
Buchanan, Mich.....	86	8	20,000	16.00
Kalamazoo, Mich.....	140	9	20,000	18.00
Niles, Mich.....	92	8	20,000	16.00
Michigan City, Ind.....	56	6½	20,000	13.00
Elkhart, Ind.....	101	8	20,000	16.00
Sturgis, Mich.....	132	8½	20,000	17.00
Laporte, Ind.....	59	7	20,000	14.00
Livingston, Mich.....	79	8	20,000	16.00
Hartford, Mich.....	109	8½	20,000	17.00
St. Joseph, Mich.....	90	6	24,000	14.40
Beloit, Wis.....	91	5	30,000	15.00
Janesville, Wis.....	91	5	30,000	15.00
Rockford, Ill.....	87	5	30,000	15.00
Byron, Ill.....	89	5	30,000	15.00

As the complainant did not appear at the taking of testimony in this case, we must base our conclusion upon the evidence submitted on behalf of defendants and the statistical information in this office. As appears above, even when the 6-cent rate was in effect between Chicago and South Bend the minimum was 24,000 pounds and the earnings \$14.40 per car, while with the present rate of 8 cents and the 20,000-pound minimum the earnings are only \$16. In the complaint reliance seems to be placed upon the 5-cent rate from Chicago to Beloit, Wis., as justifying the demand that a 6-cent rate should be made effective from Chicago to South Bend, but it appears that the minimum to Beloit and other points west of Chicago is 30,000 pounds and the earnings \$15 per car, as compared with \$16 to South Bend. Under these circumstances, the car earnings being so nearly the same, we do not feel justified in reducing the rate in question, and the complaint will be dismissed.

No. 1766.
LAGOMARCINO-GRUPE COMPANY ET AL.
v.
ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted April 2, 1909. Decided May 4, 1909.

Rates on bananas in carloads from New Orleans and Mobile to Burlington, Cedar Rapids, Davenport, Ottumwa, Des Moines, Fort Dodge, and Waterloo, Iowa, not found unreasonable.

C. W. Durbin for complainants.

Ed. Baxter and Sidney F. Andrews for Illinois Central Railroad Company, Mobile & Ohio Railroad Company, and New Orleans & Northeastern Railroad Company.

Chester M. Dawes for Chicago, Burlington & Quincy Railroad Company.

E. B. Peirce for Chicago, Rock Island & Pacific Railway Company and St. Louis & San Francisco Railroad Company.

A. G. Briggs for Chicago Great Western Railway Company.

REPORT OF THE COMMISSION.

LANE, Commissioner:

Complainants are engaged in the buying and selling of fruit, particularly bananas, at certain cities in Iowa, which are set out below in connection with the rates from New Orleans and Mobile to such points.

The following table shows the present rates and the rates in effect prior to August 27, 1906, designated in the table as former rates, per 100 pounds on bananas, in carloads, from New Orleans and Mobile to the cities named:

Rates from New Orleans and Mobile, in cents per 100 pounds.

To—	Present rate.	Former rate.
	Cents.	Cents.
Burlington.....	52	46
Cedar Rapids.....	60	56
Davenport.....	56	52
Ottumwa.....	60	56
Des Moines.....	64	59
Fort Dodge.....	66	64
Waterloo.....	62	59

The complaint is that the present rates are unreasonable. This complaint was filed on October 2, 1908. On June 2, 1908, the Commission rendered an opinion in three cases involving rates on bananas from New Orleans and Mobile to Kansas City, Mo., and Iola, Parsons, Topeka, and Hutchinson, Kans., testimony having been taken during the spring of 1908. A voluminous record was made in those cases, showing in minute detail the method of performing the service in moving the bananas northward from the Gulf ports, and at the hearing in this case that record was asked to be made a part of the present case, in order to prevent the taking of a large amount of additional testimony. In the three cases decided on June 2, 1908, *Topeka Banana Dealers' Asso. v. St. L. & S. F. R. R. Co.*, 13 I. C. C. Rep., 620, the Commission rendered a very exhaustive opinion, sustaining the rates then in effect, which were as follows: Kansas City, 63; Iola, 73; Parsons, 73; Topeka, 80; and Hutchinson, 80 cents.

As will be seen by comparison, all the rates here brought in question are lower than the 63-cent rate to Kansas City, except that the rate to Des Moines is 1 cent and Fort Dodge 3 cents higher. Iowa lying north of the state of Missouri, in which is situated Kansas City, the distances from the Gulf ports to the Iowa cities are greater than to Kansas City. No evidence was offered by complainants that had any bearing upon the reasonableness of the rate to the Iowa cities, save that which was before the Commission when the decision above mentioned was rendered, unless it was the showing that there had prior to 1906 existed lower rates than were now in effect. While it is always persuasive, yet it is not conclusive that because rates were lower at one time, the present rates are unreasonable. In the opinion referred to, the Commission found that the 46-cent rate between the Gulf ports and Chicago was the result of competition from Baltimore to Chicago by the eastern lines. We also found that the 63-cent rate from the Gulf ports to Kansas City was not unreasonable.

The cities in Iowa referred to are, in a sense, between Chicago and Kansas City, and we find in most cases that the present rates are somewhat lower, while the distances are greater. We are inclined to believe that the adjustment of rates on bananas between the points in question and Kansas City is as fair as could be made by any action of this Commission, and, having held the rate to Kansas City not to be unreasonable, we will not condemn the rates here brought in question. There is no complaint that the adjustment of rates as between the cities is discriminative, but solely that the rates are unreasonable.

For the reasons stated, the complaint will be dismissed.

Nos. 1464 and 1465.

OZARK FRUIT GROWERS ASSOCIATION

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY ET AL.

Submitted March 1, 1909. Decided May 4, 1909.

Rates for the refrigeration of strawberries and peaches shipped from points in the Ozark fruit region to points in the west, north, and east not found unreasonable.

McGill & Lindsey and *P. A. Rodgers* for complainant.

E. B. Peirce for St. Louis & San Francisco Railroad Company, and Chicago, Rock Island & Pacific Railway Company.

M. L. Clardy, J. C. Jeffery, and *B. M. Flippin* for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.

S. W. Moore and *F. H. Wood* for Kansas City Southern Railway Company.

F. L. Littleton for Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

S. F. Andrews for Illinois Central Railroad Company.

T. W. White for Vandalia Railroad Company, Pennsylvania Railroad Company, Pennsylvania Company, and Pittsburg, Cincinnati, Chicago & St. Louis Railway Company.

SUPPLEMENTAL REPORT OF THE COMMISSION.

LANE, Commissioner:

The principal issues raised in these cases relating to transportation rates and car minima have been disposed of by an opinion heretofore rendered. 16 I. C. C. Rep., 106. The remaining question now to be considered is the charge for refrigeration. This service for the St. Louis & San Francisco Railroad and the Kansas City Southern Railway is furnished by the Armour Refrigerator Line, and the full charge, as appears in the tariffs of the carriers, is retained by that line. In addition to the evidence presented by the complainant, the Commission has made as thorough an investigation of these charges of

16 I. C. C. Rep.

its own motion as was practicable. We have ascertained the quantity of ice required to refrigerate strawberries and peaches from points of origin in the Ozark country to Denver, Kansas City, Omaha, St. Louis, and Chicago (taking these as representative destination points), the cost of the ice placed in the bunkers, both at points of original icing and of reicing, and have compared the charges made with the rates for like service in other sections of the United States, and without entering into details in this opinion, we have reached the conclusion that at this time the Commission would not be justified in ordering a reduction in the refrigerating charges complained of. The complaints will therefore be dismissed.

16 I. C. C. Rep.

No. 1369.

INDIANA STEEL & WIRE COMPANY

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY ET AL.

No. 1370.

KITSELMAN BROTHERS

v.

SAME.

No. 1371.

KOKOMO STEEL & WIRE COMPANY

v.

SAME.

Submitted June 11, 1908. Decided May 3, 1909.

For a number of years prior to May 25, 1907, the carrier defendants, by tariffs duly published and filed with this Commission, had maintained identical joint rates on steel and wire products from what was known as Chicago-Cincinnati territory when destined to Arkansas common points. Beginning on that date the carriers divided the said territory along the Illinois-Indiana state line, and by tariffs in which they all participated or concurred established rates applying to Chicago territory and other rates applying to Cincinnati territory, particularly to Muncie and Kokomo, Ind., which are embraced therein, which rates were higher from said last-mentioned points to Arkansas common points than from points of origin within Chicago territory, whereby, as between manufacturers and shippers in Chicago territory and manufacturers and shippers located at Muncie and Kokomo, there was created a condition of preference with respect to rates and regulations in favor of the manufacturers and shippers in Chicago territory and of prejudice and disadvantage with respect to manufacturers and shippers of similar products in Cincinnati territory, particularly with respect to Muncie and Kokomo. The discriminations thus wrought between the two territories tended largely to, and did, exclude the

manufacturers and shippers at Muncie and Kokomo from competition in Arkansas common points with the manufacturers and shippers located in Chicago territory. The manufacturing plants at Muncie and Kokomo having been established after the establishment by the defendants of the Chicago-Cincinnati territory, and the rates, practices, rules, and regulations applying to shipments of wire and wire products from such territory destined to Arkansas common points, and in view thereof, and the traffic of such plants having grown up in competition with the traffic from similar plants in Chicago territory between the years 1902 to 1907; *Held*, That the different rates, rules, and regulations made to apply to Chicago territory and to Cincinnati territory beginning in May, 1907, created discriminations, preferences, prejudices, and disadvantages as between Chicago territory and Cincinnati territory, and particularly between the plants located at Joliet, De Kalb, Lockport, Waukegan, Janesville, and Milwaukee, in Chicago territory, and the plants located at Muncie and Kokomo, in Cincinnati territory, which said discriminations, preferences, prejudices, and disadvantages are found to be undue and unjust, and are hereby condemned.

Miller, Shirley & Miller for complainants.

O. E. Butterfield, Samuel O. Pickins, and S. H. Johnson for defendants.

REPORT OF THE COMMISSION.

COCKRELL, Commissioner:

The complaints in the above cases, filed December 14, 1907, contain substantially the same allegations, and by consent the cases were heard together. In dockets Nos. 1369 and 1370 the complainants are located at Muncie, Ind., and in No. 1371 at Kokomo, Ind. They are each engaged in manufacturing from steel billets, rods, wire, wire nails, woven-wire fence, and other wire products, for interstate shipment; from Muncie over the lines of defendants, the Lake Erie & Western Railway and the Cleveland, Cincinnati, Chicago & St. Louis Railway, hereinafter called the "Big Four;" and from Kokomo over the lines of defendants, the Lake Erie & Western Railway, the Toledo, St. Louis & Western Railway, and the Pittsburg, Cincinnati, Chicago & St. Louis Railway, hereinafter called the "Pan Handle;" such shipments moving to Arkansas common points in connection with the other defendants, through Mississippi River gateways, such as St. Louis and Thebes.

They charge that the defendants operating lines west of the Mississippi River crossings into Arkansas common points, in connection with the defendants above named, are members of an association known as the Arkansas Freight Committee; that for many years prior to June 27, 1907, the Arkansas Freight Committee issued and maintained identical tariff rates, classifications, and regulations for the shipment of such steel products from all points in the territory known as Chicago-Cincinnati territory, east of the Mississippi River

and north of the Ohio River, including in its tariffs a provision that woven-wire fence, wire nails, and barbed wire might be shipped together, or mixed, in carload lots, at the same carload rate for any one or more of said products, to Arkansas common points, all the defendants participating therein; that the mills of complainants are located in the state of Indiana, in the said Chicago-Cincinnati territory; that the American Steel & Wire Company has mills or factories at De Kalb, Joliet, Lockport, and Waukegan, in the state of Illinois, and is manufacturing identical steel products from steel billets and shipping the same into Arkansas common points through said Mississippi River gateways at St. Louis and Thebes, in competition with the complainants; that the American Steel & Wire Company's factories are at a greater distance from Arkansas common points and from the Mississippi River gateways than are complainants' mills.

They state that on June 27, 1907, the said Arkansas Freight Committee, representing all the defendants, made effective a tariff, 1-J, whereby the territory east of the Mississippi River, north of the Ohio River, and west of the Indiana-Illinois state line (known as Chicago territory), wherein are located the factories of the said American Steel & Wire Company, was given an undue and unreasonable preference and advantage over the territory north of the Ohio River and east of the Illinois-Indiana state line (known as Cincinnati territory), wherein the factories of complainants are located; that as a consequence of that tariff the said American Steel & Wire Company was given an undue and unreasonable preference and advantage over complainants as to freight rates upon wire products shipped to Arkansas common points, and also as to classification and other regulations affecting such products, in the following particulars, to wit:

An advance of 4 cents per 100 pounds on all wire, wire nails, and woven-wire fence shipped from Cincinnati territory to Arkansas common points was exacted, while no increase was made from Chicago territory, thereby compelling complainants to pay an excess of 4 cents per 100 pounds over that exacted from their competitors in the said Chicago territory. The said tariff denied the benefits of carload rates upon fractional carload lots shipped at the same time and in connection with one or more carloads from Cincinnati territory, while it continued to allow such benefits to complainants' competitors in Chicago territory, resulting in a much lower carload rate to said competitors than to complainants.

Complainants charge that the result of the said tariff will be to exclude them from marketing their products in Arkansas, for the reason that the excess in freight will make it impracticable to compete with the mills of the American Steel & Wire Company, located

in Chicago territory, and the said wire company will have the entire Arkansas market without competition. They claim—

That they have been greatly injured by reason of the discriminating rate classification and other regulations in operation under said tariff of June 27, 1907, and that they are not able to earn a fair profit on their goods marketed and shipped to the state of Arkansas because of the unfair discriminations in rates to which they are exposed.

They pray that defendants, comprising the Arkansas Tariff Committee, be ordered to discontinue the said discriminatory rates, classifications, and regulations, and to prepare and promulgate, in accordance with the law, a tariff which shall place the territory designated as Cincinnati territory on as favorable a basis as that designated as Chicago territory in so far as pertains to the shipment of wire, wire nails, woven-wire fence, and other wire products, to said points in Arkansas, and will place them in as favorable a position with respect to such shipments as that now occupied by the said American Steel & Wire Company. They further pray that each of the defendants be required to discontinue any joint rate or tariff arrangement which shall in any manner discriminate against the complainants or the locality in which their mills are situated or that shall discriminate in favor of the said American Steel & Wire Company and the locality in which its mills are situated, and that such defendants be required to provide the same or equally as favorable shipping facilities under the same or equally as favorable regulations, and have the same or equally as favorable through rates as those enjoyed by the American Steel & Wire Company in the said Chicago territory.

The defendants deny that the adjustment in the tariff referred to, as between the Chicago and Cincinnati territories, is unreasonable or unjust or gives any undue preference or advantage, and contend that the provisions are reasonable and just.

The argument of the defendants was based principally upon the statement that the originating lines running through Muncie and Kokomo are entirely separate and distinct from the originating lines at the said competing points named in the Chicago territory, and in their brief say—

That before a case is made against any common carrier under this provision (sec. 3 of the act) it must appear that such common carrier has been guilty of a practice which operates to the prejudice of one and in favor of another. It can not be said that a carrier violates this provision simply because it collects a rate from a point on its line to a given market which rate is higher than another carrier collects from some point on some other line to the same market.

This contention is not supported by the facts in these cases, which show that for twelve or fifteen years prior to the filing of these com-

plaints what is known as Chicago-Cincinnati territory was well defined and included Illinois, Indiana, and parts of southern Wisconsin, wherein are located the mills of the complainants and their competitors. The mills at Joliet, De Kalb, Lockport, and Waukegan, Ill.; Janesville and Milwaukee, Wis., and Anderson, Ind., near Muncie and Kokomo, were established as early as 1898, and the carriers having lines from southwest territory to St. Louis established identical rates and regulations for shipments from all the Chicago-Cincinnati territory to Arkansas points, using St. Louis as a basing point. The Arkansas Freight Committee, including the defendants, St. Louis Southwestern; Frisco; Missouri Pacific; St. Louis, Iron Mountain & Southern, and leased lines; Kansas City Southern; Kansas City, Fort Scott & Memphis; and some other lines, was organized in 1901, and its territorial directory No. 1, I. C. C. No. 5, effective March 16, 1901, described the defined territories, including Chicago-Cincinnati territory, and showed differentials on St. Louis, Mo., from Chicago-Cincinnati territory to Arkansas common points identical on all classifications and rates. These facts were known to the complainants when they established their mills in 1902, and up to 1907 the same rates and privileges were given to them as to their competitors.

Identical classification and commodity rates from the Chicago-Cincinnati territory to Arkansas common points were established by supplement No. 5 to Arkansas Freight Committee tariff No. 1-I, I. C. C. No. 51, effective August 25, 1906, thus simply maintaining the classifications and commodity rates which had been in force from 1901 and prior. This supplement showed, as issuing lines, the defendants, the Chicago, Rock Island & Pacific Railway, hereinafter designated as the Rock Island; the Missouri Pacific and the St. Louis, Iron Mountain & Southern railways, hereinafter designated as the Missouri Pacific lines; the St. Louis & San Francisco Railroad, hereinafter designated as the Frisco; the St. Louis Southwestern Railway; the Kansas City Southern Railway; the Fort Smith & Western Railway; the Midland Valley Railway; the Louisiana & Arkansas Railway; the Texarkana & Fort Smith Railway in connection with the Arkansas Midland Railway; the Chicago & Eastern Illinois Railway; the St. Louis, Kansas City & Colorado Railway; and some other lines. It further showed, as concurring lines, the Big Four; the Pan Handle; the Toledo, St. Louis & Western Railway; the Lake Erie & Western Railway, as well as the Chicago & Alton Railroad, and practically all railroads from the Chicago-Cincinnati territory into Arkansas common points through St. Louis and Thebes gateways.

The first change in rates was made by supplement No. 29 to Arkansas Committee tariff No. 1-I, I. C. C. No. 51, effective May 25, 1907, 16 I. C. C. Rep.

issued by practically the same lines and concurred in by the same lines, limiting the 5-cent differential applicable from all points to Arkansas common points, in carloads, to Chicago territory west of the Illinois-Indiana state line, leaving class rates east of that line in Indiana 7 cents. Arkansas Freight Committee tariff No. 1-J, I. C. C. No. 58, effective June 27, 1907, with the same issuing and participating carriers, applying on all classes and commodities from Chicago territory to Arkansas common points, separated Chicago territory from Cincinnati territory and established through routes and joint rates from Cincinnati territory to Arkansas common points, on wire, wire nails, and woven-wire fence, in rolls, and other steel-wire articles, 4 cents per 100 pounds higher than from Chicago territory, from which territory no increase was made. In Arkansas Freight Committee tariff No. 1-K, I. C. C. No. 59, effective February 17, 1908, with the same issuing and participating carriers, the rate from Kokomo and Muncie on woven-wire fence in straight carloads or mixed with wire and nails was raised 3½ cents, while no increase was made in the rates from Chicago territory. On May 16, 1908, the rates on wire, wire nails, and woven-wire fence, from Chicago territory, were raised 2 cents per 100 pounds by supplement No. 9 to Arkansas Freight Committee tariff No. 1-K, I. C. C. No. 59. Taking Little Rock as a typical Arkansas point for illustration, the rates now are as follows:

	Cents.
Wire and nails and woven-wire fence, in straight or mixed carloads, Chicago territory to Little Rock.....	25
Wire and nails, in straight or mixed carloads, from Kokomo and Muncie to Little Rock.....	27
Wire and nails, when mixed with woven-wire fence, Kokomo and Muncie to Little Rock.....	30½
Woven-wire fence in straight carloads or mixed with wire and nails, Kokomo and Muncie to Little Rock.....	30½

It also appears that a part of a carload in excess of a carload will go from Chicago territory at the carload rate, under Rule 8 of the Western Classification, while from Kokomo and Muncie a part of a carload will be charged the less-than-carload rate.

The defendant, the Rock Island, passes through Joliet, Ill., and reaches Arkansas common points over its own lines through Kansas City, Mo. The Rock Island-Frisco lines, through their control of the Chicago & Eastern Illinois Railway, extend through Joliet, Ill., to St. Louis and there connect with the Big Four and the Pan Handle, which reach Muncie, Ind., and also with the Pan Handle and the Toledo, St. Louis & Western and the Lake Erie & Western, which reach Kokomo, Ind. They are all parties, either as issuing or as

participating lines, to the tariffs hereinbefore recited, which established the through routes and joint rates from Chicago-Cincinnati territory to Arkansas common points and gave to the competitors of complainants, hereinbefore named, an unreasonable preference and advantage over complainants, and subjected complainants to an undue and unreasonable prejudice and disadvantage.

The relation of the rates and regulations in effect for so many years prior to 1907 was voluntarily established and participated in by all the carriers from Chicago-Cincinnati territory to the southwest, through Mississippi River gateways, and must be considered reasonable and just. The tariffs hereinbefore quoted further show that the increased rates from Indiana points in the Cincinnati territory affect steel and wire products mainly. Upon other products from the same territory very few increases have been made, thus directly discriminating against complainants' products in favor of the products of their competitors, and thereby giving an undue and unreasonable preference and advantage to the products of complainants' competitors and subjecting the products of complainants to an undue and unreasonable prejudice and disadvantage.

The Rock Island-Frisco lines form a continuous line over which shipments are made from Chicago territory to Arkansas common points, and a part of a continuous line over which shipments are made by their codefendants, the Big Four, the Pan Handle, and the Toledo, St. Louis & Southwestern, from Muncie and Kokomo to Arkansas common points through St. Louis or Thebes gateways. The defendants, parties to the tariffs indicated, grouped the territories in question and jointly published and filed with the Commission schedules of rates, fares, charges, and regulations applicable from Chicago-Cincinnati territory to Arkansas common points upon all products, and thereby became bound by the terms of the interstate commerce act to name only such rates, fares, charges, and regulations as were just, reasonable, nonpreferential, nonprejudicial, and nondiscriminatory, either as to persons, places, or commodities, without any regard to the line or lines of the carriers on which the shipment originates or over which it must pass from origin to destination. The identical through routes and joint rates from Chicago-Cincinnati territory to Arkansas common points were voluntarily established by the defendants and formally maintained for many years prior to 1907 without complaint or question by shippers or carriers as to their reasonableness and justness. The carriers failed to show sufficient grounds for such advance in 1907, and they have wholly failed to show any sufficient or reasonable grounds for such advanced rates and changed regulations. An order will be entered accordingly.

KNAPP, *Chairman*, dissenting:

The conclusions of the majority in these cases rest upon a finding of unjust discrimination against Kokomo and Muncie and in favor of Chicago, and this involves a proposition of law which I am not prepared to accept.

It seems obvious that a carrier can not discriminate against a shipper or community which it does not serve. In other words, to establish a violation of the third section—which is the sole basis of complaint in these cases—it must appear that a carrier does some act which operates to the undue prejudice of one locality or to the undue preference of a competing locality. It can not be said that a carrier violates this section simply because it charges rates from a point on its line to a given destination which are higher than the rates of another carrier to the same destination. If this be true of individual carriers, as must be conceded, I think it is equally true of lines formed by connecting carriers, even though one of them is common to both lines.

The Lake Erie & Western is the initial carrier from Kokomo, and the Lake Erie & Western and Big Four are initial carriers from Muncie. Neither of these roads, either by itself or in connection with any other defendant road, engages in transporting the traffic in question from Chicago territory to Arkansas. If this were the only feature of the case, it would appear plain that the Lake Erie & Western and Big Four could not be charged with unjust discrimination against Kokomo and Muncie. It is contended, however, that inasmuch as the rates from Kokomo and Muncie as well as from Chicago to Arkansas points are joint rates, and as traffic originating at all three points is or may be carried from the Mississippi River crossings to Arkansas over the same road, a through line or group of lines is formed which serves both producing territories and can therefore be guilty of discriminating between them; and considerable stress seems to be laid upon the fact that all the rates in question are published in a single tariff to which all the defendants are parties. I can not regard the circumstance that a common tariff is published as at all material. The real question presented is whether when two through routes have been established from different points of origin, the delivering carrier being common to both, unjust discrimination can be predicated upon disparity in rates from the different points of origin. I am of the opinion that this question should be answered in the negative. Reduced to its essential elements the point in controversy is shown by the following summary: Road A from Chicago to St. Louis and road B from Kokomo to St. Louis each joins with road C from St. Louis to Arkansas in making

joint rates from the several points of origin. I hold that two distinct lines are thus established, namely, line AC from Chicago to Arkansas and line BC from Kokomo to Arkansas, and that within the meaning of the third section line AC can not be said to discriminate against a point on road B, or vice versa.

As I understand the facts in these cases, the advance from Kokomo and Muncie was made by and accrues entirely to carriers from those points to the Mississippi River crossings, and did not at all increase the revenues of the lines from those crossings to Arkansas—that is to say, the action declared by the majority to be unlawful, because it resulted in unjust discrimination, is entirely chargeable to lines which have no voice in making the rates from Chicago, and in no way participate in the transportation from that point.

In the recent case of *Indianapolis Freight Bureau v. C., C., C. & St. L. Ry. Co. et al.*, 16 I. C. C. Rep., 56, the Commission found that certain roads had low proportional rates from Louisville to East St. Louis, but these roads were not initial carriers from Indianapolis to the Mississippi River crossings, while none of the roads which served both Louisville and Indianapolis were parties to the proportional rates in question. It was accordingly held that the resulting advantage to Louisville was a matter for which the carriers from Indianapolis were not responsible, and therefore did not afford a basis for finding that they discriminated against Indianapolis. I perceive no real difference between that case and the cases now under consideration, except that the lower rates in the former case were proportional rates, while the lower rates in these cases are joint rates. This seems to me a difference merely in the form in which the rates are established—a matter of no practical concern to the public—and not a difference in principle so far as the third section is concerned.

With all deference to the judgment of my associates, I am of the opinion that a finding of unjust discrimination in the present proceeding is unwarranted as a matter of law, and that if complainants are entitled to any relief, it would be upon a finding that the advanced rates from Kokomo and Muncie are unreasonable in themselves. But there are no facts in this record to justify such a finding, nor is the decision of the majority placed upon that ground.

No. 1365.

KALISPELL LUMBER COMPANY ET AL.

v.

GREAT NORTHERN RAILWAY COMPANY ET AL.

Submitted March 12, 1909. Decided May 4, 1909.

1. The Great Northern Railway Company ordered to establish and maintain rates on lumber and other forest products from certain points on its line in Idaho and Montana to certain points on its line located on the Pembina-Port Arthur line, which are certain differentials under the lumber rates from the Spokane group.
2. The Great Northern Railway and the Minneapolis, St. Paul & Sault Ste. Marie Railway companies ordered to establish and maintain through routes and joint rates on lumber and other forest products between certain points in Idaho and Montana and certain points in North Dakota.

Lind, Ueland & Jerome, H. S. Folsom, jr., and William A. Glasgow for complainants.

Hale Holden and *W. R. Begg* for Great Northern Railway Company.

Alfred H. Bright for Minneapolis, St. Paul & Sault Ste. Marie Railway Company.

REPORT OF THE COMMISSION.

COCKRELL, Commissioner:

The principal subject of this petition relates to the transportation of lumber from mills located in Flathead County, in the state of Montana, on the line of the Great Northern Railway, to points in North Dakota, located on that line, including all the localities between the so-called "Buford-Edgemont" and the "Pembina-Port Arthur" lines, established in the case of the *Potlatch Lumber Co. v. Northern Pacific Railway Co. et al.*, hereinafter referred to. The petition also asks that through routes and joint rates be established between the Great Northern Railway Company and the Minneapolis, St. Paul & Sault Ste. Marie Railway Company from this same territory to

16 I. C. C. Rep.

points on the latter line in North Dakota, which were in force prior to November 1, 1907, but were canceled on that date at the instance of the Minneapolis, St. Paul & Sault Ste. Marie Railway.

Flathead County lies in the northwestern part of the state of Montana and is bounded on the west by the state of Idaho, on the north by Canada, and on the east by the summit of the Rocky Mountains. The petitioners are members of the Montana Larch & Pine Manufacturers' Association, having its headquarters at Kalispell, Mont. This association embraces all the manufacturers of lumber and forest products in Flathead County, their mills being located on the main line of the Great Northern Railway or on the Columbia Falls branch, this branch extending from Lake View, Mont., to Columbia Falls, Mont., where it connects with the main line.

Along the line of the Great Northern Railway there has been voluntarily recognized and differentiated by that carrier at various times, through the process of rate making, three principal lumber-producing sections:

1. At points located proximate to the Pacific coast, called the "Coast group;"

2. At points proximate to the city of Spokane, Wash., called the "Spokane group;" and,

3. At points located east of the Spokane group extending to the eastern end of the timber belt. This group has various designations. It is known as the "Montana-Oregon group" when the lumber is destined to certain specific points of destination, but when the lumber is destined to places not so specified, it is designated under the names of the several stations where the lumber originates, such as "Sand Point," "Libby," "Warland," and "Kalispell." But hereinafter in this opinion it will be called for convenience the "Eastern group."

All the complainants' mills are located within the Eastern group east of Leonia, Idaho, and hereinafter this particular district east of Leonia will be called the "Kalispell district."

While the Coast, Spokane, and Eastern groups have always been known in tariff phraseology by different names, sometimes the mills located in each of these groups have taken the same rates and at other times different rates. For instance, the rate applicable to the Coast group likewise at one time applied to the Spokane group and to the Eastern group. At other times the Coast rate applied both to the Coast group and to the Spokane group, but the mills in the Eastern group had a graded differential lower than either of them; and still at other times all three had different rates, Spokane taking a differential lower than the Coast group and the Eastern group a graded differential lower than the Spokane group. The point in this

case is that while the Great Northern Railway at present accords to mills in both the Spokane group and the Eastern group, which, as before stated, includes the Kalispell district, a differential lower than mills in the Coast group, nevertheless this has been brought about by lowering the rate of the Spokane group and raising the rates of the Eastern group to the level of the rates of the Spokane group, and the differential under which the complainants operated in competition with Spokane to points in North Dakota has been abrogated.

When the Great Northern Railway penetrated to the Pacific coast, about the year 1893, it established a rate of 40 cents per 100 pounds on lumber from points located on that line at or near the Pacific coast—no other mills existing elsewhere on the line—to St. Paul, Minn., and points then in existence intermediate thereto. And whenever new lumber-producing sections were discovered between the Pacific coast and the Rocky Mountains, or new points of destination sprang up in the states of North Dakota and Minnesota, this same 40-cent rate was applied, no matter how long or how short the haul. In this case the evidence shows that at the time this 40-cent rate was established there were no lumber-manufacturing places on the line of the defendant except in the Coast group, and when afterwards mills in the Kalispell district and the Spokane group originated, in order named, the same 40-cent rate was applied to all destinations in North Dakota and Minnesota.

Up to the year 1906 it was difficult for mills in the Kalispell district, which produce mostly common-grade lumber, to obtain a market under this 40-cent rate, and an effort was made to have the Great Northern establish a lower rate to stations on its line in North Dakota, where there was a demand for common-grade lumber. This effort was successful and the rates were reduced, not only from the Kalispell district, but from all the lumber-producing sections in the Eastern group. By this reduction no new group was constructed, however, and instead of having one rate apply at a differential lower than the Spokane group from all the mills lying east of Spokane, the city of Kalispell, Mont., and places proximate thereto taking the same rate, were accorded, on the average, a 10-cent differential lower than Spokane to points in North Dakota. And the mills between Kalispell and the city of Spokane were given a rate graded upward in amount toward the city of Spokane, where it remained 40 cents.

On November 1, 1907, the defendant advanced its rates generally from all these various groups. Then certain mills in the Coast group and in the Spokane group filed complaints with the Commission attacking the advance. The case attacking the advance in the Coast group was No. 1329, *Pacific Coast Lumber Mfrs. Asso. et al. v. N. P.*

Ry. Co. et al., 14 I. C. C. Rep., 23, and the case originating from the Spokane group was No. 1348, *Potlatch Lumber Co. et al. v. N. P. Ry. Co. et al.*, 14 I. C. C. Rep., 41. The case now before us attacks the advance from the Kalispell district, but does not attack the advance in the rates from the mills in all the Eastern group, the complainants representing, as before stated, mills located only between Leonia, Idaho, and Kalispell, Mont.

The original complaint in this case asks merely for the restoration of rates existing between the points in question prior to November 1, 1907, but before the case could be heard the Commission decided the cases hereinbefore mentioned, which materially affected the interests of the complainants in that the differential existing between the Kalispell district and the Spokane group was destroyed. This necessitated the filing of a supplemental petition which further prays that the Great Northern Railway establish and maintain differential rates on lumber from the Kalispell district to the North Dakota points in an amount not less than the differentials it enjoyed under the Spokane group in force on October 31, 1907. This prayer was further amended at the argument, and what the complainants now desire is a differential under the Spokane group of 5 cents per 100 pounds at the Pembina-Port Arthur line, graded upward westwardly to 7 cents at Buford, N. Dak.

In the case originating from the Coast group it was sought to have restored the rates in force prior to the tariff of November 1, 1907, and by the decision in that case the old rates were restored except as modified by the differentials in the Potlatch case. The decision in the *Potlatch case* established differentials under the Coast rates for the Spokane group, but spread the Spokane group rate eastward to include all the mills in the Eastern group, thus, in effect, making one group out of what had previously been two. The following table shows the rates on fir lumber from Seattle, Wash., a typical coast point, and pine lumber from Spokane and Kalispell, as they existed on October 31, 1907; on November 1, 1907, the date of the advance in the rates; and on October 15, 1908, the date the rates promulgated after the decision of the Commission in the cases referred to went into effect. The points of destination are the points in North Dakota, which territory is within the issues involved in this complaint.

The term "Kalispell" used in this table refers to the city of Kalispell, Mont., and not to the Kalispell district. Mills in the Kalispell district, other than those taking the rate of the city of Kalispell, took an arbitrary rate higher than the rates from the city of Kalispell up to October 15, 1908, when all the mills in the Kalispell district were given the Spokane rates.

Rates per 100 pounds.

To—	October 31, 1907, from—			November 1, 1907, from—			October 15, 1908, from—		
	Seattle.	Spo- kane.	Kali- spell.	Seattle.	Spo- kane.	Kali- spell.	Seattle.	Spo- kane.	Kali- spell.
	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
Mondak, Mont.....	40	40	26	45	40	26	40	33	26
Buford, N. Dak.....	40	40	26	45	40	26	40	33	29
Ray, N. Dak.....	40	40	26	47½	40	34	40	35	33½
Berthold, N. Dak.....	40	40	29	47½	40	36	40	35	35
Crosby, N. Dak.....				48½	42	38	40	36	36
Minot, N. Dak.....	40	40	30	47½	40	36	40	35	35
Granville, N. Dak.....	40	40	31	48	40½	36½	40	36	36
Lansford, N. Dak.....	40	40	33	48½	41	37	40	36	36
Towner, N. Dak.....	40	40	31	48½	41	37	40	36	36
Maxbass, N. Dak.....	40	40	33	48½	41	37	40	36	36
Rugby, N. Dak.....	40	40	31	48½	41½	37½	40	36	36
Omamee, N. Dak.....	40	40	33	49	42	38	40	36	36
York, N. Dak.....	40	40	32	48½	42	38	40	37	37
McOumber, N. Dak.....	40	40	32	49	42	38	40	37	37
Leeds, N. Dak.....	40	40	32	48½	42	38	40	37	37
Churchs Ferry, N. Dak....	40	40	32	48½	42	38	40	37	37
Bisbee, N. Dak.....	40	40	33	49	43	39	40	37	37
Devils Lake, N. Dak.....	40	40	33	48½	42	38	40	37	37
Olmstead, N. Dak.....	40	40	34	49	44	40	40	37	37
Munich, N. Dak.....	40	40	35	50	44	40½	40	37	37
Larimore, N. Dak.....	40	40	33	50	44½	41½	40	37	37
Conway, N. Dak.....	40	40	34	50	45	42	40	37	37
Grand Forks, N. Dak.....	40	40	35	50	45	43	40	37	37

The analysis of this table shows that on October 31, 1907, the Coast rate and the Spokane rate to points in North Dakota was 40 cents per 100 pounds, constituting a blanket rate over the entire state. Kalispell had a differential under these rates of 5 cents at the Pembina-Port Arthur line, graded upward to 14 cents at Buford, N. Dak.

By the change in the rates on November 1, 1907, Spokane was given for the first time a substantial differential under the Coast rates, and the differential existing between Spokane and Kalispell was reduced. It will be noticed that this favor granted to the Spokane group was brought about by raising the rates from both the Coast group and Kalispell more than the rates from the Spokane group.

On October 15, 1908, as the result of the decisions in the cases referred to, the Coast rate was reduced to 40 cents through North Dakota, and the Spokane rate was made a differential under the Coast rate of 3 cents at the Pembina-Port Arthur line, graded upward to 7 cents at Buford. The differential between Kalispell and Spokane was eliminated, except to a very few stations immediately east of the Montana-North Dakota state line, the Kalispell rates being raised to the same amount to which the Spokane rates were lowered.

So it is seen that on October 31, 1907, the complainants had a differential under the Spokane group through North Dakota of from 5 cents at the Pembina line, graded upward to 14 cents at Buford. Now they have none, but claim that they are entitled to a differential of 5 cents at the Pembina line, graded upward to 7 cents at Buford.

The grounds upon which complainants insist that they are entitled to this differential are:

1. The mills in the Kalispell district are considerably nearer to the North Dakota points than are the mills in the Spokane group. Further, that the intervening grades between the Spokane group and the Kalispell district makes the haul from the Kalispell district to points in North Dakota less expensive to the carrier than the haul from the mills in the Spokane group to the same destinations. Moreover, that the traffic from the Kalispell district is more profitable to the carrier by reason of the fact that a carload of lumber from this district weighs heavier than one from the Spokane group.

2. The Great Northern Railway has always voluntarily recognized the right of the Kalispell district to a differential as against Spokane.

3. The commercial conditions attendant upon the manufacture of lumber in the Kalispell district are less favorable than in the Spokane group.

An epitome of the complainants' contentions would seem to be that a differential under the Spokane rate should be granted to them on account of (1) geographical and transportation reasons, and (2) commercial reasons. We will first consider the commercial conditions which differentiate the Kalispell lumber from the Spokane lumber. The complainants do not predicate their claim for relief on commercial conditions, standing alone, but assert that even granting for the moment that transportation reasons might justify the Great Northern in placing them in one group with Spokane, this should not be done when transportation conditions are at all in their favor and when at the same time the commercial conditions under which they operate will not permit them to compete in the North Dakota markets with Spokane under equal rates.

The forest trees growing in the Kalispell district are the larch, usually called "tamarack," fir, pine, and spruce, the percentage of the different kinds being: Larch, 75 per cent; fir, 15 per cent; pine, 6 per cent; and spruce, 4 per cent. These forest trees are also common to the Spokane group, but their size, quality, and distribution in each of these sections are affected by the elevation. Kalispell is located immediately west of the Rocky Mountains, and the general altitude of this district is between 3,000 and 3,500 feet, and that of the Spokane group about 2,000 feet. All the trees which grow in the Kalispell district are affected by this greater altitude, being more dwarfed and knotted than the product of the Spokane group, making the commercial value of the Kalispell product less than the product of the Spokane group. Larch is a tree of the higher altitudes, and while it grows in the lower altitude of the Spokane group it does not prosper to the extent that it does in the Kalispell district. From the record

in this case and the other lumber cases we think we are correct in saying that the larch is the predominating tree in the Kalispell district and pine in the Spokane group. Necessarily the predominating tree gives character to the section which produces it.

Larch produces only a low-grade lumber, commercially inferior to pine lumber. When the larch of the complainants was first introduced into the market there appeared considerable prejudice against it, and it took from five to six years to place it in the North Dakota market. But the complainants finally succeeded. During the year 1906 the Kalispell district produced and shipped over the Great Northern Railway 103,576,967 feet, the shipments moving into North Dakota amounting to 64,897,674 feet, or about two-thirds of the output. Shipments into North Dakota under the tariff now in effect amounted to 1,879,089 feet between October 15, 1908, and January 1, 1909. Under the same tariff and under equal rates the Spokane group shipped during the month of November, 1908, nearly 4,000,000 feet into North Dakota, though there are a great many more mills in the Spokane group than in the Kalispell district.

Lumber produced from the larch tree, which constitutes 75 per cent of the timber in the Kalispell district, sells at from \$1 to \$2 less per 1,000 feet than other varieties of coniferous trees. It is also heavier than pine, and the complainants are not only handicapped by the inferior quality of their greatest product, but by the greater weight. The complainants claim that a carload of lumber weighs on the average from the Kalispell district 56,000 pounds and from the Spokane group 49,000 pounds. While some conflict appears in the testimony as to the amount of the difference in weight between a carload from each locality, it was admitted by the traffic manager of the Great Northern that a carload of lumber from the Kalispell district on the average weighed heavier than a carload of lumber from the Spokane group. This seems to be due to the fact that there is a greater mixture of larch in lumber originating from the Kalispell district.

In approaching the statement of our conclusion in this case, which will be based on transportation conditions, we will recur to the differential voluntarily established by the Great Northern in favor of the Kalispell district. Through North Dakota this carrier established a differential in favor of Kalispell as against Spokane, but to points east of North Dakota to and including Minnesota Transfer the rates were made the same from all the lumber-producing sections on the line of the Great Northern. Kalispell was the nearest producing market and North Dakota the nearest consuming market, and if Kalispell then was entitled to a lower rate into North Dakota, there is some force in the contention that it is entitled to it at this time.

The extreme limit along the main line of the Great Northern Railway of the present group taking the Spokane rate is from the city of Spokane to Columbia Falls, Mont., a distance of 283 miles. There are few mills, if any, in the city of Spokane, but many of the larger mills are located north and south of the city of Spokane, and the mileage is greater than if the shipments originated at Spokane. The Potlatch mill, for instance, is 354 miles from Whitefish, Mont., a point located in the Kalispell district, which place can well represent the average distance into North Dakota of all the mills located in the Kalispell district. The complainants claim that the average distance of all the mills in the Spokane group from Whitefish is 309 miles, and assuming that these figures are correct it will be observed that it covers the entire area of the Spokane and the Montana-Oregon groups as defined in the *Potlatch case*. While it does not appear to be greater than the area that is blanketed under the Coast rates, nevertheless when considering the proximity of the North Dakota field to the Kalispell district, in view of all the facts, circumstances, and conditions in this case, it is a considerable area to blanket under one rate. Taking Minot, N. Dak., as a point of comparison, the distance from Whitefish to Minot is about 71 per cent of the distance from the city of Spokane to Minot, Whitefish being 687 and Spokane 962 miles from Minot.

The complainants' rates were raised in the *Potlatch case* without their side of the controversy being heard, and, after hearing, we think that they are entitled to a differential under the Spokane rate to the North Dakota district. The present Spokane differential under the Coast group to points in North Dakota is 3 cents at the Pembina line graded upward to 7 cents at Buford. The Spokane group is separated from the Coast by the Cascade Mountains and a wide strip of treeless country 200 miles in length. On the other hand, there is no untimbered country between the Spokane group and the Kalispell district, nor is there any natural boundaries between the two. For this reason it seems to us that the proper differential from Leonia, Idaho, which seems to be the most fitting line of demarcation, and points on the Great Northern east thereof to and including Rexford, Mont., to points on the Pembina-Port Arthur line should be 2 cents under the Spokane group rates graded up westwardly to 4 cents under the Spokane group rates at Buford, N. Dak., and from points on the Great Northern in Montana east of Rexford to points on the Pembina-Port Arthur line 3 cents under the Spokane group rates graded up westwardly to 5 cents under the Spokane group rates at Buford, N. Dak.

On November 1, 1907, the Great Northern Railway Company and the Minneapolis, St. Paul & Sault Ste. Marie Railway Company canceled a joint through tariff, known as Great Northern I. C. C. A-2000,

which established through routes and joint rates from the Spokane group, including the territory herein referred to as the Kalispell district, to points located on the Minneapolis, St. Paul & Sault Ste. Marie Railway, the junction point being at Minot, N. Dak. This tariff was canceled at the instance of the latter line, which now carries lumber in connection with the Canadian Pacific Railway from the Spokane group to points located on its line. The complainants pray that these through routes and joint rates be restored. No defense whatever has been offered by either of the defendants against granting this relief, and the prayer of the complainants in this respect will be granted in so far as seems proper in this proceeding.

The route via the Canadian Pacific and the Minneapolis, St. Paul & Sault Ste. Marie lines affords no outlet to points in Dakota on the lines of the latter from the Kalispell district. This district should have access to those markets, and we find that the defendants, Great Northern Railway and Minneapolis, St. Paul & Sault Ste. Marie Railway, should establish on or before August 1, 1909, through route from Leonia, Idaho, and lumber-producing points on the Great Northern Railway in Montana, via Minot, N. Dak., to points in North Dakota located upon the lines of the Minneapolis, St. Paul & Sault Ste. Marie Railway between Minot and Hankinson, including Hankinson, and between Hankinson and Drake. We also find that said defendants, Great Northern Railway and Minneapolis, St. Paul & Sault Ste. Marie Railway, should apply to such through route rates from said points of origin to said destinations which are in accord and harmony with those herein prescribed to points in North Dakota located upon the lines of the Great Northern Railway.

The establishment of the new route and rates herein prescribed will, to some extent, affect the marketing of lumber, and, in order that dealers and producers may have opportunity to adapt their affairs to newly created conditions, the changes which are herein provided for should be made on statutory notice. These conclusions are not to be understood as forming the basis for any reparation.

An order will be entered in accordance with these views.

16 I. C. C. Rep.

No. 2012.

BIG BLACKFOOT MILLING COMPANY
v.
NORTHERN PACIFIC RAILWAY COMPANY ET AL.

Submitted March 12, 1909. Decided May 4, 1909.

The Northern Pacific Railway and Chicago, Burlington & Quincy Railroad companies ordered to establish and maintain rates on lumber and other forest products from certain points on the Northern Pacific Railway to specified points named in the report which are certain differentials under the lumber rates from the Spokane group.

Lind, Ueland & Jerome and *William A. Glasgow* for complainant.
C. W. Bunn and *Charles Donnelly* for Northern Pacific Railway Company.

E. D. Sewall for Chicago, Milwaukee & Puget Sound Railroad Company.

Hale Holden for Chicago, Burlington & Quincy Railroad Company.

REPORT OF THE COMMISSION.

COCKRELL, *Commissioner*:

The petitioner is a corporation organized under the laws of Montana, having its principal place of business at Missoula. It owns and operates three lumber mills, located, respectively, at Bonner, St. Regis, and Hamilton, in Missoula County, Mont. Bonner is about 7 miles east of Missoula on the main line of the Northern Pacific Railway Company; St. Regis, about 78 miles west of Missoula, on the Coeur d'Alene branch of the Northern Pacific Railway; and Hamilton, about 47 miles south of Missoula, on the Bitter Root branch of the Northern Pacific Railway Company. The defendant, Chicago, Milwaukee & Puget Sound Railway has purchased all the right, title, and interest of the defendant, Chicago, Milwaukee & St. Paul Railway of Montana, the latter company having been recently constructed through Missoula County. From the tariffs on file with the Commission, it appears that the Chicago, Milwaukee & Puget Sound Railway quotes rates from St. Regis, but no reference is made to Bonner or Hamilton. This new line has points of origin of lumber in this section which are also on the Northern Pacific

lines. The same is true as to points of destination farther east. We do not feel warranted on the information now available in requiring it to join in through routes and joint rates. It is, of course, expected that fair and reasonable routes and service will be arranged for in the schedules. The defendant Chicago, Burlington & Quincy Railroad Company serves complainant's mills as a connecting carrier with the Northern Pacific Railway.

For convenience, the timber region in which complainant's mills are located will hereinafter be referred to as the "Missoula district." This district has been included and grouped by the defendants for the purpose of establishing rates for the transportation of forest products in the group known as the "Montana-Oregon rates" group. There are two other principal lumber-producing districts to the west of the Missoula district on the line of the Northern Pacific Railway Company, commonly known as the "Coast rates" and the "Spokane rates" groups. Up to October 15, 1908, the Missoula district has always been granted a differential rate on lumber under both the Spokane and Coast groups to points in North Dakota and the Missouri River territory. These differentials were voluntarily established by the carriers and ranged in amount from 3 to 9 cents under the Spokane rates in the North Dakota territory and from 5 to 10 cents in the Missouri River territory. To points in North Dakota, however, timber-producing sections east of the city of Spokane to the end of the timber belt did not take the same rate, but there existed a graded differential increasing in amount eastwardly. For this reason each of the complainant's mills to points in North Dakota took a different rate, the mill at Bonner taking the lowest rate because it was the most eastern. But to all other points of destination the Montana-Oregon rates applied from all of complainant's mills, the Spokane rate ending at Evaro, Mont., on the main line of the Northern Pacific, and at Buford, Mont., on the Coeur d'Alene branch, St. Regis being immediately east of Buford.

By a tariff effective October 15, 1908, these differentials were entirely abrogated, and by this petition the complainant desires a differential be restored, and prays that it be made 5 cents per 100 pounds under the Spokane group rates at the Pembina-Port Arthur line, graded up to 6 cents at Medora, N. Dak., on the line of the Northern Pacific; 6 cents at Marmarth, N. Dak., on the line of the Chicago, Milwaukee & Puget Sound Railway; and 5 cents at Edgemont, S. Dak., on the line of the Burlington.

The rates of which complaint is made, the establishment of which had the effect of eliminating the differential under which the complainant prospered, are those established in compliance with the order of the Commission in case No. 1348, *Potlatch Lumber Co. et al.*

v. *Northern Pacific Ry. Co. et al.*, 14 I. C. C. Rep., 41. By that decision territory which before had been divided for rate-making purposes into two groups, namely, the Spokane group and the Montana-Oregon group, was united, and the same differential under the Coast rates was fixed for the whole of it. The points where petitioner's mills are located are all within the Montana-Oregon territory, and the union of this group with the Spokane group destroyed the differential, the Spokane group rates being lowered and the complainant's rates being raised to the same level as the Spokane rates.

To sustain its contention the complainant presents the same arguments presented by the complainants in the case of the *Kalispell Lumber Co. et al. v. Great Northern Ry. Co. et al.*, *supra*, namely, that the differential under the Spokane group rate should be accorded to the Missoula district for commercial and transportation reasons. We will not discuss the commercial reasons advanced further than to say that the lumber produced from timber grown in the Missoula district, as far as commercial value is concerned, more nearly approximates the lumber produced from the Spokane group than does the lumber from the Kalispell district.

In reference to the transportation reasons advanced by the complainant to sustain its position it may be said that the lumber-producing sections involved in the *Kalispell case* are located on the Great Northern Railway, and the Missoula district lies directly south of it on the Northern Pacific Railway. Both of these districts lie approximately 275 miles or more east of the city of Spokane on these respective lines and are the most eastern lumber-producing sections and nearest to the consuming market. From a geographical standpoint they are corresponding lumber-producing sections and for that reason should take the same rates. And there should be in this case, as in the *Kalispell case*, a division of the timber belt.

We find that from lumber-producing points on the Northern Pacific Railway between Evaro and Huson on the west, and Garrison on the east, including those points and also including points on branch lines intersecting the main line at points intermediate Huson to Garrison, there should be differential rates on lumber and other forest products to points on the Pembina-Port Arthur line, as defined in the *Potlatch case*, *supra*, and points west thereof to and including Medora, N. Dak., on the Northern Pacific, and Edgemont, S. Dak., on the Chicago, Burlington & Quincy, at least 2 cents per 100 pounds under Spokane group rates, as defined in said *Potlatch case*, *supra*, to points on said Pembina-Port Arthur line, and graded up westwardly to at least 4 cents per 100 pounds under Spokane group rates at Medora, N. Dak., on the Northern Pacific, and at Edgemont, S. Dak., on the Chicago, Burlington & Quincy. From lumber-producing

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points on the Northern Pacific in Montana east of Garrison, including branches, the differentials should be 3 cents per 100 pounds under Spokane group rates to points on said Pembina-Port Arthur line, and graded up westwardly to 5 cents per 100 pounds under Spokane group rates at Medora, N. Dak., on the Northern Pacific, and at Edgemont, S. Dak., on the Chicago, Burlington & Quincy.

We also find that from lumber-producing points on the Chicago, Milwaukee & Puget Sound Railway in this Missoula district, which are not as yet clearly established or defined, and within substantially the limits herein prescribed, like differentials of not less than 2 cents and 3 cents, respectively, under Spokane group rates should be established to points on said Pembina-Port Arthur line and be graded up westwardly to not less than 4 cents and 5 cents, respectively, under Spokane group rates at Marmarth, N. Dak. As has been noted, this defendant's line is newly constructed and its tariffs and traffic arrangements are not yet well settled. We shall, therefore, at this time enter no order as to it. If, however, rates are not established by it in substantial conformity to the views we have expressed, that fact may be brought to our attention and such order as may be necessary will be made.

The establishment of the rates herein prescribed will to some extent affect the marketing of lumber, and in order that dealers and producers may have opportunity to adapt their affairs to newly created conditions the changes which are herein provided for should be made on statutory notice. These conclusions are not to be understood as forming a basis for any reparation.

An order will be entered in accordance with these findings.

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No. 1575.
MICHAEL COHEN & COMPANY
v.
SOUTHERN RAILWAY COMPANY ET AL.

Submitted April 15, 1909. Decided May 3, 1909.

Defendants' rate applied to the transportation of 2 carloads of marble from Long Island City, N. Y., to Shipman, Va., of 54 cents per 100 pounds found unreasonable, and a rate of 22 cents per 100 pounds found reasonable; but for reasons stated in the report no order made prescribing rate for the future. Reparation awarded.

Herbert Coope for complainant.

Ed. Baxter, C. B. Northrop, and Lincoln Green for Southern Railway Company.

Henry Wolf Bikle and George Stuart Patterson for Pennsylvania Railroad Company, and Philadelphia, Baltimore & Washington Railroad Company.

Dominick Griffin for Long Island Railroad Company.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

The complainant made shipment of 2 carloads of marble from Long Island City, N. Y., to Shipman, Va., over the lines of the Long Island Railroad Company, the Pennsylvania Railroad Company, the Philadelphia, Baltimore & Washington Railroad Company, and the Southern Railway Company. The weight of one car was 30,000 pounds and of the other 32,610 pounds. The rate assessed and collected upon both shipments was 54 cents per 100 pounds. The complainant insists that a rate of 22 cents per 100 pounds should have been assessed, and asks reparation.

At the time these shipments moved the published joint rate in effect over the lines of the defendants upon marble of this character was 18 cents per 100 pounds, when released to a value of 20 cents per cubic foot, and 22 cents per 100 pounds when released to a value of 40 cents per cubic foot. Unless released to a value of 40 cents per cubic foot the first class rate applied. The shipments in question were not released and the first class rate was assessed.

These two shipments consisted of cut marble, to be used in the outside construction of a building. The pieces were not boxed, but were laid upon the car and fastened in place by strips of wood. The value was about \$3 per cubic foot. The value of the marble out of which this material was cut before any work had been expended upon it was about 90 cents per cubic foot. The testimony showed that some kinds of marble in the rough would not equal 40 cents per cubic foot, but it fairly appeared that all manufactured marble was worth much more than this sum and that the fair average value of cut marble to be used for building purposes would be from \$3 to \$5 per cubic foot.

This movement was under Southern Classification and the Southern Railway was originally made the only defendant. It was suggested to that carrier upon the hearing that the Southern Classification was manifestly wrong in requiring a release to 40 cents per cubic foot in order to entitle these shipments to a better than the first class rate. It was finally arranged that the Long Island Railroad Company, the Pennsylvania Railroad Company, and the Philadelphia, Baltimore & Washington Railroad Company should be made parties defendant and that the case should stand continued, to permit the Southern Classification Committee to consider a revision of the classification of marble. The other defendants have been cited in and have appeared and a further hearing has been had, upon which it was stated that the Southern Classification Committee had made a report which would probably be adopted by southern lines by which very material changes are suggested, among others the entire elimination of value.

The Commission finds that the rate applied to these shipments was unjust and unreasonable, and that a rate of 22 cents per 100 pounds would have been a just and reasonable rate at that time. The complainant is therefore entitled to reparation by the difference between the amount collected and what would have been assessed under a rate of 22 cents, or \$200.35, with interest.

An order will be entered for the payment of reparation, but no order will be made at this time looking to the future. This record is not sufficient to enable us to undertake a revision of the classification of marble, nor to express an intelligent criticism of the new regulations suggested. If nothing is done by the carriers, the matter will be taken up either in this or a new proceeding with a view to reaching a conclusion and making an order.

No. 879.
CITY OF SPOKANE ET AL.
v.
NORTHERN PACIFIC RAILWAY COMPANY ET AL.

Submitted April 26, 1909. Decided May 3, 1909.

For reasons stated in the report, the effective date of the Commission's order in this case, as to the Chicago & Northwestern Railway, the Union Pacific Railroad, the Oregon Short Line Railroad, and the Oregon Railroad & Navigation Company, is temporarily postponed.

Brooks Adams, A. M. Winston, H. M. Stephens, Lawrence Hamblen, Frank Allen, R. M. Barnhart, and J. M. Geraghty for complainants.

F. C. Dillard for Union Pacific Railroad Company, Oregon Railroad & Navigation Company, and Oregon Short Line Railroad Company.

SUPPLEMENTAL REPORT OF THE COMMISSION.

PROUTY, Commissioner:

The Commission established by its order in this case class rates and also certain commodity rates from St. Paul and Chicago to Spokane. The Union Pacific lines, namely, the Union Pacific Railroad Company, the Oregon Short Line Railroad Company, and the Oregon Railroad & Navigation Company, had always concurred in tariffs from both these points to Spokane. Those lines appeared in this proceeding and assumed a very considerable part of the burden of the defense. There was no suggestion upon the hearing or upon the argument that these lines expected or desired or ought to be exempted from any order which might be made. Our order was therefore directed against them as well as against the Northern Pacific and the Great Northern.

After the promulgation of the order the Union Pacific lines filed a petition asking to be relieved from the effect of the order, first, because no direct line leading from St. Paul to Omaha was included in the order, so that the Union Pacific lines could not, if they desired, establish the rates from St. Paul. Second, it was alleged that the distance from both St. Paul and Chicago via the Union Pacific lines was much greater than via the Northern Pacific and Great

Northern and that therefore while the rates fixed might be just and reasonable for the shorter distance over the northern lines, it would be unjust to force the Union Pacific and its affiliated companies to apply these rates via their longer route.

An examination of the record disclosed the fact that no direct line from St. Paul to Omaha was a party to these proceedings. The Commission was forced, therefore, either to continue the case and cite in the necessary line from St. Paul to Omaha, which would result in long delay, or to grant the petition of the Union Pacific as to St. Paul. The order of the Commission has been so modified as to except the Union Pacific lines from its operation as to St. Paul traffic.

Our order as modified now establishes rates from St. Paul to Spokane via the Great Northern and the Northern Pacific. It establishes rates from Chicago both via St. Paul and the Great Northern and Northern Pacific and also via Omaha over the Northwestern line from Chicago to Omaha and the Union Pacific lines from Omaha to Spokane. The distance via St. Paul is, in round numbers, 1,900 miles, via Omaha 2,300 miles. The Union Pacific lines urge that they ought not to be compelled to establish via the long line from Chicago the rates which have been found to be reasonable by the Commission for the short line, and this is the only question presented.

This phase of the petition was assigned for further hearing at Washington. The Northern Pacific, Great Northern, Chicago, Burlington & Quincy, and Chicago & Northwestern companies were not represented. The complainant filed a protest against the granting of the petition. The Union Pacific lines were heard in argument.

In establishing class rates from St. Paul to Spokane the Commission found that the rates previously maintained to Seattle were sufficiently high and made rates to Spokane $16\frac{2}{3}$ per cent less than those to Seattle, mainly because the distance was less. It established class and commodity rates from Chicago to Spokane which were higher than those fixed from St. Paul, because the distance from Chicago was 400 miles greater than the distance from St. Paul. It is apparent, therefore, that distance was an important consideration in the fixing of these rates. That being so, the Union Pacific lines insist, with great force, that we ought not to compel them to put in a rate for 2,300 miles which was found reasonable for 1,900 miles.

While it often happens that distances as great as 400 miles are ignored in naming rates to points 2,000 miles away, we are inclined to think that if Spokane were alone involved the position of the Union Pacific might be well taken. Spokane has an adequate service from Chicago by the northern lines, and there is no apparent reason why that community should be allowed to insist upon the transportation

of its freight by the more circuitous Union Pacific route, against the will of that company.

The real difficulty arises with respect to territory traversed by the Union Pacific in reaching Spokane. The Union Pacific line to Spokane leaves the main line at Pendleton, reaching Spokane over a branch 251 miles in length. The Northern Pacific extends to Pendleton, which it reaches through Spokane from the east. It will be seen therefore that with respect to the Union Pacific route Spokane is the more distant point, while with respect to the Northern Pacific route Pendleton is the more distant point. This condition has resulted in the past in giving to all that territory lying between Spokane and Pendleton the Spokane rate. If, now, the Union Pacific is excused from naming these rates to Spokane and the Northern Pacific is not required to name them to Pendleton, what is to be the fate of this territory?

That question, although an important one, is not yet presented upon this record. Certain communities in that section have filed their protest against relieving the Union Pacific from the effect of this order; but those communities are not parties to this proceeding. As the Commission has frequently pointed out, it can only act in the making of its orders upon the case presented. We can therefore at the present time express no opinion as to how this territory should be treated.

The effective date of the order of the Commission with respect to all the defendants has been postponed until June 1. One of the conditions upon which that postponement was granted is that on or before May 20 some comprehensive plan will be presented by the carriers to the Commission for the establishment of rates to all intermediate territory. That plan will necessarily embrace this territory between Pendleton and Spokane. If it is approved by the Commission, no further steps in this case will be necessary. If not approved, Spokane will probably be obliged to file a supplemental petition, for the purpose of securing an order with respect to the remaining commodity rates, and we think that one or more of these other communities should also intervene in this case, to the end that the whole question may be disposed of upon this record.

We shall therefore temporarily postpone the effective date of our order as to the Chicago & Northwestern Railway, the Union Pacific Railroad, the Oregon Short Line Railroad, and the Oregon Railroad & Navigation Company, leaving it effective as to the northern lines.

If rates are not established which are satisfactory to points upon the Union Pacific lines, like Baker City, Pendleton, Walla Walla, etc., we will permit those communities to file intervening petitions in this proceeding, upon a consideration of which a conclusion will be reached and rates established.

No. 1526.

MARICOPA COUNTY COMMERCIAL CLUB

v.

WELLS FARGO & COMPANY.

Submitted February 9, 1909. Decided May 3, 1909.

Defendant's base rates applying between Phoenix, Mesa, and Tempe, Ariz., and specified points in California, Arizona, New Mexico, Colorado, and Kansas found to be unreasonable, and lower rates prescribed for the future.

F. A. Jones for complainant.

C. W. Stockton for defendant.

A. A. Hurd for Atchison, Topeka & Santa Fe Railway Company, intervener.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

This complaint is brought by the Maricopa County Commercial Club, a voluntary organization devoted to the business interests of the county of Maricopa, Ariz. The complaint attacks the express rates of the defendant between Phoenix, Mesa, and Tempe, in the county of Maricopa, and various points in different portions of the United States.

Phoenix is situated north of the main line of the Southern Pacific, being reached by a branch extending from Maricopa north, a distance of 35 miles. Tempe is upon this branch 8 miles south of Phoenix, and Mesa is situated upon another branch 7 miles east of Tempe. Where the distances are considerable rates to and from all three of these points may properly be the same, and Phoenix will be taken as representative of the three in this report.

Phoenix is also reached from the Santa Fe main line upon the north by a branch line extending from Ash Fork, 193 miles south.

The rates attacked in this proceeding are those from the Missouri River and points east, those from Los Angeles and other points upon the Pacific coast, and those between Phoenix and various points upon the lines of the Southern Pacific and Santa Fe mostly in the Territory of Arizona.

The testimony upon the part of the complainant was largely devoted to showing the necessity of an express service to these localities. Phoenix buys its manufactured articles mainly in the east, and, owing to the long distance and the time required for transportation by freight, express service is frequently resorted to. The testimony

showed that millinery, ladies' suits and cloaks, and many other articles of a similar character moved largely by express. One merchant testified that he paid the defendant between \$3,000 and \$3,500 per year for the transportation of articles of this character.

Owing to the long distances from tide water fresh fish and other similar sea foods must be brought by express, and are in fact transported to Phoenix in considerable quantities in this manner. Fruits and vegetables when not in season at Phoenix are brought in from the Pacific coast, and butter and eggs are also transported by express from Kansas and other points in the east.

Agricultural operations can only be conducted in the vicinity of Phoenix by the aid of irrigation. At the present time about 125,000 acres are under irrigation in the county of Maricopa, and it was said that this might soon be increased to 350,000. Large quantities of fruits and vegetables are produced here at certain seasons of the year, and these find their best market in the mining towns in southern Arizona and in the lumber camps in the north. To a considerable extent these commodities must move by express. The quantity is not sufficient to ship in carloads under refrigeration, and no refrigeration service by freight is available in less than carload quantities.

The testimony fairly shows that an express service is rather more important to the complaining localities than ordinarily.

The defendant is the only express company serving this territory, and it was insisted that this monopoly had resulted in extravagant rates. The only evidence tending to show that the rates attacked were extravagant was a comparison with those prevailing in other sections.

The defendant produced two witnesses, who testified that Phoenix had developed rapidly notwithstanding these express charges and that the inhabitants of Phoenix had generally paid these rates without protest. The traffic manager of the company also testified that express rates were determined by freight rates; that express charges in this territory were lower, as compared with freight charges, than in any other section of the country, and that they were, in his opinion, too low.

In *Kindel v. Adams Express Co. et al.*, 13 I. C. C. Rep., 475, the matter of express rates west of the Missouri River was considered in some detail. We there said (p. 491):

While this record is not conclusive, it indicates that the general level of express rates in this country at the present time is not excessive. Some of these defendants, especially Wells Fargo & Company, show an income which may fairly be regarded as too great, but this is not true of the Adams or the American or the United States, upon the face of the figures as presented by them.

At page 494 it was further said:

Wells Fargo & Company operates over about 44,000 miles of railway in the United States, the greater portion of this mileage lying west of the Missouri River, and the
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Pacific Express Company operates mainly in that same territory. These two companies, especially Wells Fargo & Company, show a much higher percentage of net profit than do the other defendants.

Since the report in the *Kindel case* was promulgated Wells Fargo & Company has filed its annual report to this Commission for the year ending June 30, 1908. From that report it appears that the total cost of the property used by that company in its business has been \$2,385,823. For the year its gross receipts were \$24,490,699, and it paid to railroads for their services \$11,064,786, leaving for its operating revenues \$13,425,913. Its operating expenses were \$10,310,887, including taxes, and its net operating revenue \$3,115,025. Out of this it paid a dividend of 10 per cent upon its capital stock of \$8,000,000, leaving over \$2,300,000 after the payment of all expenses and the above dividend.

The company also owns certain other property not used in its business, from which it derived an income of more than \$1,000,000 net. This result from its financial operations for that year, which is understood to have been an unfavorable one for the transportation companies, confirms the impression announced in the *Kindel case* that the revenues of this company are excessive. Certainly its charges may well be reduced if upon other considerations they are unreasonably high.

We deal here only with the base rate per 100 pounds, no question having been made as to rates upon smaller packages. The rates attacked are denominated in the complaint as "merchandise," "general special," and "special." The so-called special rates seem to be made for the movement of particular commodities between given points. No testimony has been offered in this proceeding which will enable us to form an opinion as to the reasonableness of those charges, which must depend upon the peculiar conditions obtaining in each case. Our decision will apply therefore only to the merchandise and the general special rates of the defendant.

Phoenix is not upon the main line of either the Southern Pacific or the Santa Fe. The cost of transporting express matter to and from that point is somewhat increased by this circumstance, and rates ought probably to be somewhat higher for that reason. Points upon the Santa Fe are reached from Phoenix over the branch extending north to Ash Fork, and the cost of operation is probably somewhat greater upon this line than upon the main line of the Santa Fe. Rates should therefore be somewhat higher between points upon the Santa Fe than between points upon the Southern Pacific.

It must also be remembered that Wells Fargo & Company operates largely in territory where the level of express rates is much the same as here and that whatever reductions are made here must finally be applied to its other business in that territory. It must be still further

remembered that reductions are in the net revenues of the company, since the cost of operation must remain the same. We feel here, as in the *Kindel case*, that we should proceed with caution in reducing these rates. The first consideration in an express service is the quality of the service itself, and the compensation allowed should be adequate to a service of high quality.

We are of the opinion that the rates named below, in cents per 100 pounds, would be reasonable rates to apply between Phoenix, Mesa, and Tempe and the other points named, and that the higher rates now in effect are unjust and unreasonable.

Rates between Phoenix, Mesa, and Tempe, Ariz., and the points named.

	Merchan- dise.	General special.
	Cents.	Cents.
Kansas City, Kans.....	800	400
Los Angeles, Cal.....	400	275
Needles, Cal.....	350	250
Maricopa, Ariz.....	50	40
Florence, Ariz.....	60	45
Wickenburg.....	70	50
Congress Junction, Ariz.....	80	60
Gila, Ariz.....	75	55
Kelvin, Ariz.....	75	55
Winkelman, Ariz.....	80	60
Red Rock, Ariz.....	90	70
Wenden, Ariz.....	110	85
Salome, Ariz.....	110	85
Tucson, Ariz.....	120	95
Bouse, Ariz.....	140	110
Prescott, Ariz.....	140	110
Mohawk, Ariz.....	130	105
Jerome Junction, Ariz.....	160	130
Casa Grande, Ariz.....	60	45
Parker, Ariz.....	175	140
Benson, Ariz.....	160	130
Tombstone, Ariz.....	200	150
Abraham Fork, Ariz.....	200	150
Yuma, Ariz.....	200	150
Willcox, Ariz.....	200	150
Williams, Ariz.....	225	165
Seligman, Ariz.....	225	165
Disbee, Ariz.....	230	170
Naco, Ariz.....	225	165
Bowie, Ariz.....	200	150
Douglass, Ariz.....	250	175
Flagstaff, Ariz.....	250	175
Simon, Ariz.....	200	150
Nogales, Ariz.....	225	165
Deming, N. Mex.....	300	210
Lordsburg, N. Mex.....	250	175
Kingman, Ariz.....	300	210
Chloride, Ariz.....	325	230
Holbrook, Ariz.....	325	230
Globe, Ariz.....	350	250
El Paso, Tex.....	375	265
Gallup, N. Mex.....	400	275
Denver, Colo.....	800	400

We have not fixed rates from points east of the Missouri River. The rate established from Kansas City must automatically reduce rates from eastern destinations by the amount of the reduction made in the rate from Kansas City, and we are not at the present time disposed to order, in case of this express business, a lower through rate than that made by this combination.

An order will be entered establishing the rates above named.

No. 1831.

WILLIAM K. NOBLE

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY ET AL.

Submitted February 13, 1909. Decided May 10, 1909.

Higher rate on elm hoops to East St. Louis, Ill., from Prairie Grove, Ark., than from Fayetteville, Ark., found to be unreasonable. Reparation awarded.

R. B. Coapstick for complainant.

E. B. Peirce and *T. A. Wray* for St. Louis & San Francisco Railroad Company.

Ed. Baxter for Louisville & Nashville Railroad Company.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

The facts in this case are as follows:

On October 14, 1907, complainant shipped from Prairie Grove, Ark., a station on the St. Louis & San Francisco Railroad, 13 miles west of Fayetteville, Ark., 1 carload, 39,000 pounds, of elm hoops consigned without routing instructions to Nashville, Ill. The shipment moved via East St. Louis and the Louisville & Nashville Railroad, and a rate of 28½ cents per 100 pounds, made up 22½ cents Prairie Grove to East St. Louis and 6 cents East St. Louis to Nashville, aggregating \$111.15, was charged and collected.

On that date there were in effect rates of 15 cents per 100 pounds from Fayetteville to East St. Louis and 5 cents, via Baltimore & Ohio Southwestern, East St. Louis to Nashville, making a combination of 20 cents; and also rates of 13 cents from Fayetteville to Thebes, Ill., and 7 cents from Thebes to Nashville, making also a combination of 20 cents.

Complaint, filed November 4, 1908, alleges that the charges demanded and collected as aforesaid were unjust and unreasonable, and prays for reparation.

Defendant, the St. Louis & San Francisco Railroad Company, states that it had no commodity rate from Prairie Grove, because no

hoops had been shipped from there, but admits that the rates on hoops should be the same from Prairie Grove as from Fayetteville and that complainant is entitled to reparation upon that basis. On April 23, 1908, the Fayetteville rates were made effective from Prairie Grove to East St. Louis and to Thebes. It is also admitted that the shipment was received without routing instructions and should have been sent via the route that would afford the lowest charge.

From the above statement of facts it appears, and we so find, that it was unreasonable to charge a higher rate on elm hoops from Prairie Grove than from Fayetteville. We also find that defendant, St. Louis & San Francisco Railroad Company, misrouted this shipment, thus unnecessarily causing complainant to pay higher charges. The unreasonable charge was on the line of the same defendant between Prairie Grove and East St. Louis. We therefore find complainant is entitled to recover from defendant, St. Louis & San Francisco Railroad Company, the difference between the amount collected on this shipment and what would have been due thereon if said defendant had not established and applied a higher rate from Prairie Grove than from Fayetteville, and had not misrouted said shipment.

An order will be entered requiring said defendant, St. Louis & San Francisco Railroad Company, to pay to complainant, on or before July 1, 1909, without recourse upon any other carrier, reparation in the sum of \$33.15, with interest.

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No. 1910.

O. W. COUNSIL

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY ET AL.

Submitted March 17, 1909. Decided May 10, 1909.

Complainant specifically directed that shipment of live stock be forwarded via a certain route in order that he might have the advantage of trying a market so reached. Shipment moved in accordance with his directions. He now claims reparation on the ground that a lower rate applied via another and more direct route than the one which he selected, but via which he could not have reached the market which he desired to try. Complaint dismissed.

O. W. Council for complainant.

E. B. Peirce and *S. H. Johnson* for St. Louis & San Francisco Railroad Company.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

The facts in this case are as follows:

January 20, 1908, complainant shipped from Haverhill, Kans., over the defendants' lines of railway 2 carloads of cattle consigned to himself at East St. Louis, Ill. The cars were stopped at Kansas City, Mo., to try the market at that place, and forwarded thence to destination, where freight charges were assessed at the rate of 27½ cents per 100 pounds, or \$126.50, plus certain charges for feed and the like, making a total of \$128.10.

This charge the complainant alleges was excessive, unreasonable, and unjust to the extent that it exceeded a charge of 22½ cents per 100 pounds, or \$104.65 plus feed, \$1.65, making \$106.30 in all. He asks reparation in the sum of \$21.85.

There is no through rate from Haverhill, Kans., to East St. Louis, Ill., via Kansas City, Mo., although there is a through rate from Haverhill, Kans., to East St. Louis, Ill., via the St. Louis & San Francisco Railroad, via which a rate of 22½ cents per 100 pounds applies. The rate charged, 27½ cents, was the only legal rate in force at the time via the route the shipment moved, at complainant's direction.

Complainant offered no testimony tending to show unreasonableness of the rate charged and admitted that the routing specified by him was to obtain the valuable privilege of testing the market at Kansas City. The routing so chosen was indirect and involved a long out-of-line haul.

Upon the above record it is obvious that this complaint is possessed of no merit, and it will therefore be dismissed.

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No. 2079.

WILLIAM J. DIEHL, DOING BUSINESS AS CAPITAL PINE
COMPANY,

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
ET AL.

Submitted March 18, 1909. Decided May 10, 1909.

Rate of 16 cents per 100 pounds on sawdust from Duluth, Minn., to Andover, S. Dak., found to be unreasonable to the extent that it exceeded 12½ cents. Reparation awarded.

John R. Kennedy for complainant.

F. G. Wright for Chicago, Milwaukee & St. Paul Railway Company.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

December 22, 1907, complainant caused to be shipped from Duluth, Minn., to Andover, S. Dak., a carload of sawdust, net weight 60,100 pounds. A joint through rate of 16 cents per 100 pounds was charged and collected, or a sum of \$96.16. At this time C., M. & St. P. tariff, I. C. C. No. A-8408, carried Class E rate, Duluth to Andover, applicable under Western Classification to sawdust, 16 cents per 100 pounds. This rate is still in effect. At the same time C., M. & St. P. tariff, I. C. C. No. A-8689, carried a specific through commodity rate from Duluth to Andover on lumber and articles taking the same rate, including sawdust, of 24 cents per 100 pounds. This rate remained in effect until March 10, 1909, when Supplement 24 to said tariff specifically authorized the application of the distance tariff rate "between stations on the Chicago, Milwaukee & St. Paul Railway."

The Chicago, Milwaukee & St. Paul Railway has no line from Duluth to St. Paul, and we do not understand that it has any arrangements for running its trains between St. Paul and Duluth over the tracks of any other railway. Tariffs above referred to name rates from Duluth, but do not show concurring or participating carriers over whose lines shipments move from Duluth to St. Paul.

At the same time there was in effect (Northern Pacific I. C. C. No. A-3075) a commodity rate on sawdust of 4 cents per 100 pounds, Duluth to St. Paul, and a distance tariff rate of the Chicago, Milwaukee & St. Paul of 8½ cents per 100 pounds, St. Paul to Andover, applicable to lumber and including sawdust. Because of this lower combination complainant alleges that the through rate charged was unreasonable. He asks that a just and reasonable rate be established by order of the Commission, and that reparation be awarded in the sum of \$24.04.

The only defense presented is that the combination of rates referred to could not have been used by complainant on his shipment from Duluth to Andover, as there were at the time specific rates in effect.

It is well settled that the distance tariff rate could not be applied. The through commodity rate was the only lawful rate that could have been applied to the through shipment. No combination of locals could have been applied except by the owner or his agent taking custody of the property at St. Paul and executing a new contract of shipment from there. And then the only combination that could have been applied was the 4-cent rate from Duluth to St. Paul and a 19-cent rate from St. Paul to Andover, or a total of 23 cents. Under these circumstances alone no presumption arises that the through rate was unreasonable.

This complaint was filed January 22, 1909. Thereafter, and on March 10, 1909, as above noted, Supplement 24 to C., M. & St. P. tariff, I. C. C. No. A-8689, which contained the commodity rate of 24 cents per 100 pounds, authorized application of the distance tariff rates "between stations on the Chicago, Milwaukee & St. Paul Railway" when such application makes a lower charge on any shipment of sawdust than the rates named in the tariff or as amended. Obviously this could have but one of two purposes—either to apply the distance tariff rates from Duluth through to destinations named in the tariff or to apply the distance rates from St. Paul in connection with the Northern Pacific or some other carrier's local rate, Duluth to St. Paul. If the distance tariff were applied through from Duluth to Andover it would make a rate of 11½ cents per 100 pounds, and applied from St. Paul to Andover it makes a rate of 8½ cents per 100 pounds. This latter rate, added to the Northern Pacific local, Duluth to St. Paul, of 4 cents, yields a through rate of 12½ cents per 100 pounds.

Under our understanding that the Chicago, Milwaukee & St. Paul line does not reach Duluth, we can not apply the mileage rate specified as applying "between stations on the Chicago, Milwaukee & St. Paul Railway" from Duluth, but as the tariff assumes to specifically authorize the application of the distance rate when it

makes less than other rate named in the tariff, it was obviously the intent to reduce the rate on sawdust from Duluth to Andover either to 11½ cents per 100 pounds or to 12½ cents per 100 pounds. This effort, however, was not undertaken along right lines. Assuming that C., M. & St. P. tariff, I. C. C. No. A-8689, was lawful, the only lawful rate to apply to this shipment was the specific through commodity rate of 24 cents per 100 pounds. The change which has been undertaken in this tariff is not understood to effect anything except a combination lower than the original through rate, but there still remains the through Class E rate of 16 cents in C., M. & St. P. tariff, I. C. C. No. A-8408, which apparently is the rate which was applied to this shipment and which is the lawful rate in the absence of a through specific commodity rate.

It is a general rule that a voluntary reduction of a rate by a carrier creates no presumption of liability for reparation on shipments made under the rate as it existed before the reduction. We are of opinion, however, that this is a case where that rule does not apply. The action of the complainant apparently brought about the reduction. In other words, it was after the filing of a formal complaint, following informal proceedings and a refusal upon the part of defendants to make reparation or to concede that the rate charged was unreasonable, that the effort was made to arrange a lower combination rate. Under these facts it must be concluded that the 12½-cent rate was at the time this shipment moved, is now, and for the future will be, reasonable, and we so find. It follows that the 16-cent rate collected by the defendants on the shipment in question was unreasonable. Complainant is therefore entitled to reparation in the difference between the amount collected and what would have been collected under a 12½-cent rate, or \$21.04, with interest. We also find that the defendants should be required to establish, and maintain as a maximum for a period of not less than two years, a rate on sawdust, carloads, from Duluth, Minn., to Andover, S. Dak., of 12½ cents per 100 pounds. The tariff complications referred to should be corrected at once.

An order will be entered accordingly.

No. 1214.

MINNEAPOLIS THRESHING MACHINE COMPANY
v.
CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY
COMPANY ET AL.

Submitted April 15, 1909. Decided May 10, 1909.

Rate of 37½ cents per 100 pounds found to be reasonable for the transportation of agricultural implements, in carloads, from Minneapolis, Minn., to New York, N. Y., when for export.

W. H. Ritchie for complainant.

R. L. Kennedy for Chicago, St. Paul, Minneapolis & Omaha Railway Company, Chicago & Northwestern Railway Company, and Pennsylvania Railroad Company.

J. B. Sheehan for Chicago, St. Paul, Minneapolis & Omaha Railway Company.

C. B. Condon and *G. W. SeEVERS* for Minneapolis & St. Louis Railroad Company.

C. M. DAVES and *Andrew Lees* for Chicago, Burlington & Quincy Railroad Company.

G. W. Markham for Chicago Great Western Railway Company.

William Ellis for Chicago, Milwaukee & St. Paul Railway Company.

Glennon, Cary, Walker & Howe for Lake Shore & Michigan Southern Railway Company, Michigan Central Railroad Company, New York, Chicago & St. Louis Railroad Company, and New York Central & Hudson River Railroad Company.

R. G. Brown and *E. B. Peirce* for Chicago, Rock Island & Pacific Railway Company.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

The original complaint in this proceeding was filed August 12, 1907, and alleged that the rate of 45 cents per 100 pounds charged by defendant carriers for the transportation of agricultural implements, in carloads, from Minneapolis, Minn., to New York, N. Y., when for export, was excessive and unreasonable and unjustly discriminatory against complainant and Minneapolis as compared with rates on like commodities from other points of manufacture in the west.

Case was set down and called for hearing at Minneapolis on December 20, 1907. The parties appeared and the case was indefinitely postponed on request of complainant, acquiesced in by defendants, negotiations for adjustment being under way.

In November, 1908, complainant filed amended complaint upon which hearing was had at Minneapolis, March 18, 1909.

As stated, the complaint alleged that the rate of 45 cents was unreasonable. The establishment of a rate of 35 cents was prayed for. Effective January 29, 1909, defendants established a rate of $37\frac{1}{2}$ cents per 100 pounds in lieu of the rate of 45 cents complained of. On hearing and in brief complainant contends that the rate from Minneapolis to New York should not be more than 35 cents. Attention was called to rates from other points of manufacture to New York for export, and to the rate per ton per mile yielded thereby as compared with the $37\frac{1}{2}$ -cent rate from Minneapolis and the rate per ton per mile yielded thereby. Nothing unusual or abnormal appeared in these comparisons.

Several witnesses introduced by complainant each testified to the reasonableness of the $37\frac{1}{2}$ -cent rate. No testimony, other than the comparisons above referred to, was introduced to the effect that it was unreasonable. It appeared that one of the Minneapolis lines and one of the lines from Chicago expressed a willingness to join their connections in the establishment of a 35-cent rate, but these two lines do not reach through from Minneapolis to New York.

It appears that the rate on agricultural implements from Minneapolis to New Orleans for export is $35\frac{1}{2}$ cents per 100 pounds, and complainant argues that this is evidence of the unreasonableness of the $37\frac{1}{2}$ -cent rate to New York. The New Orleans rate mentioned, however, is not understood to be out of line with the general adjustment of import and export rates through the port of New Orleans, which are usually lower than through the port of New York.

From the record the inevitable conclusion is that the rate of $37\frac{1}{2}$ cents is neither unreasonable nor unjustly discriminatory against Minneapolis.

Both the original and the amended complaint herein petitioned for the establishment of a reasonable rate in lieu of the rate complained of, and for such other and further orders as the Commission might deem necessary in the premises. We find that the subsequently established rate of $37\frac{1}{2}$ cents per 100 pounds is now and for the future will be a reasonable rate for the transportation of agricultural implements in carloads from Minneapolis, Minn., to New York, N. Y., for export.

No reparation was claimed as to previous shipments, and the findings herein are not to be understood as forming a basis for reparation. An order will be entered in accordance with the views herein expressed.

No. 1572.

KANSAS CITY TRANSPORTATION BUREAU OF THE
COMMERCIAL CLUB

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted January 2, 1909. Decided May 10, 1909.

1. Proportional rates on grain coming from beyond the Missouri River are the same to Mississippi River crossings from Omaha and from Kansas City via all lines. Proportional rates on grain from Omaha to Cairo and other Ohio River crossings, to Memphis, to Carolina territory, and to New Orleans, Galveston, and other Gulf ports, for export, are 1 cent per 100 pounds higher than from Kansas City. Complainant, representing grain dealers at Kansas City, alleges that this adjustment is unjustly discriminatory against Kansas City in that it does not give full recognition to the shorter distance from Kansas City to St. Louis and points southeast thereof.
2. In a case of this kind there must be an examination and consideration of the entire rate from point of production to ultimate destination. It is not sufficient to consider the rates to an intermediate market, nor alone the rates from such market, if the question of discrimination between such markets is to be determined.
3. Adoption of distance alone as a measure of the rates from points of origin to the primary market would necessarily result in a clear division of the territory between the markets and would be destructive of competition in most of that territory. It would destroy the long-established adjustment which places Missouri River crossings on a parity in both inbound and outbound rates on traffic generally. Giving to Kansas City all the advantage that could come to it from a mileage adjustment would give it a monopoly of territory in which Omaha now freely competes with Kansas City, and the application of the same rule to Omaha would give it exclusive purchasing power in territory in which Kansas City now competes with Omaha on equal terms.
4. *Traffic Bureau of the Merchants' Exchange of St. Louis v. Missouri Pacific Railway Co. et al.*, 13 I. C. C. Rep., 11, cited and the principles therein announced followed. Complaint dismissed.

G. T. Bell and *H. G. Wilson* for complainant.

E. B. Peirce and *M. A. Low* for Chicago, Rock Island & Pacific Railway Company; Chicago, Rock Island & Gulf Railway Company; St. Louis & San Francisco Railroad Company; St. Louis, San Fran-
16 I. C. C. Rep.

cisco & Texas Railway Company; and St. Louis, Kansas City & Colorado Railroad Company.

Robert Dunlap and *T. J. Norton* for Atchison, Topeka & Santa Fe Railway Company.

Hale Holden and *G. H. Crosby* for Chicago, Burlington & Quincy Railroad Company.

F. C. Dillard for Galveston, Harrisburg & San Antonio Railway Company and Houston & Texas Central Railroad Company.

T. J. Norton for Gulf, Colorado & Santa Fe Railway Company.

W. E. Keepers for Illinois Central Railroad Company and Yazoo & Mississippi Valley Railroad Company.

J. M. Johnson for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.

N. S. Brown and *J. D. Lund* for Wabash Railroad Company.

G. F. Grattan for Kansas Railroad Commission, intervener.

J. C. Lincoln for St. Louis Traffic Bureau, intervener.

M. L. Learned and *E. J. McVann* for Omaha Grain Exchange, intervener.

U. S. Pawkett for Fort Worth Board of Trade, intervener.

A. E. Helm for Wichita Board of Trade; Farmers, Merchants & Shippers Club of Kansas; and Southern Kansas Millers Commercial Club, interveners.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

Complainant herein is a voluntary association of shippers engaged in business at Kansas City, Mo., and Kansas City, Kans., hereinafter called "Kansas City," and this complaint is brought on behalf of its members who are engaged in the buying and selling and shipping of grain and grain products therefrom.

Defendants are common carriers that participate or are interested in the movement of grain from Kansas City or from Omaha, Nebr., or from both Kansas City and Omaha to St. Louis, Mo., Cairo, Ill., and other Ohio River crossings, Memphis, Tenn., New Orleans, La., Galveston, Tex., and other Gulf ports, and to the states lying east of the Mississippi and south of the Ohio rivers. Not all defendants have lines to both Kansas City and Omaha, nor do the several connecting lines of defendants reach all of the various points of destination, but all are interested or participate in the movement of grain from Omaha or Kansas City, or both of those markets.

The Omaha Grain Exchange of Omaha, Nebr., the Traffic Bureau of the Merchants Exchange of St. Louis, Mo., the Wichita Board of Trade of Wichita, Kans., the Fort Worth Board of Trade of Fort Worth, Tex., the Kansas Railroad Commission, the Kansas farmers and shippers, and the Kansas millers appear as interveners.

The complaint is that the present relationship of rates on wheat and corn and articles taking the same rates, as between Kansas City and Omaha, respectively, to the destinations named, is unduly and unjustly discriminatory against Kansas City and in favor of Omaha. No complaint is made that any specific rate is unreasonable, and no prayer is made for the establishment of any specific rates, but the demand of complainant is that the relative adjustment of rates on the commodities named as between Kansas City and Omaha shall be changed, and that there shall be a greater difference in the rates from Kansas City and from Omaha to those destinations than now obtains.

Omaha and Kansas City are both what are called "primary" grain markets. The grain market at Kansas City has existed for some twenty-five years; that at Omaha for about four years or five years.

These cities compete in the purchase of grain in northern Kansas and southern Nebraska, and they compete in the sale of grain in all places where grain is sold, but the territory of sale here brought in issue is that above described.

Both Omaha and Kansas City are, and for a long time have been, what are commonly termed "Missouri River crossings." Generally speaking, rates on all classes of merchandise moving from the Mississippi River or points east thereof and north of the Ohio River are the same to both Omaha and Kansas City via any route leading to either. Rates eastbound from Kansas City or Omaha to the Mississippi River and points east thereof and north of the Ohio River, generally speaking, are the same via all routes and all Mississippi River crossings.

The rates on grain and grain products from Kansas City or Omaha to points east of the Mississippi River and north of the Ohio River are the same via all lines and crossings.

Under the present adjustment proportional rates on grain originating beyond Kansas City or Omaha are generally the same to St. Louis from Kansas City or Omaha, while to Cairo and other Ohio River crossings, to Carolina territories, and to Memphis, and to New Orleans, Galveston, and other Gulf ports for export, they are 1 cent per 100 pounds higher from Omaha than from Kansas City. Local rates from Omaha are 1 cent per 100 pounds higher than from Kansas City to St. Louis, 2 cents higher to Cairo and other Ohio River crossings, 2 cents higher to Memphis, 1 cent higher when for Carolina territories, and 1 cent higher to New Orleans, Galveston, and other Gulf ports for export.

Kansas City is 137 miles nearer to St. Louis or Cairo than is Omaha, and is 194 miles nearer to Memphis, New Orleans, or Galveston than is Omaha.

On account of this difference in distance and the competition between them in purchasing grain in the grain fields, and in the sale of grain in the places and territories named, Kansas City complains that the equality of the proportional rates to St. Louis and the difference therein of but 1 cent per 100 pounds to the other points constitute unjust discrimination against Kansas City and in favor of Omaha.

Competition in the purchase and in the sale of grain is keen and active. Slight differences in cost or in price of sale decide the markets to which grain will go, and very slight differences in rates decide the routes over which it will move. Originally rates were made from various points of origin to markets farther east, and, under transit privileges, grain was permitted to stop at a primary market and in due time to be forwarded on the remainder of the through rate from point of origin. This resulted in a number of proportional rates from such primary market, which made the value of the grain uncertain and which created a great deal of controversy. After a time complaint against such an adjustment was filed with this Commission, and was later withdrawn under an understanding reached between the complainants and the carriers, which provided for the establishment on grain coming from beyond the Missouri River of one rate from the Missouri River to a given destination on or east of the Mississippi River and north of the Ohio River, regardless of the point of origin of the grain. This rate was called a "proportional rate." It was lower than the local rates on the same grain of the several carriers parties to the proportional rate, but, although called a "proportional rate" it has been, in effect, a flat rate, and the rate upon which the grain has moved from these markets.

When the Chicago Great Western Railway entered Omaha it established proportional rates on grain from Omaha to the Mississippi River the same as were in effect from Kansas City to St. Louis. This action led the lines reaching from Omaha to St. Louis to establish the same rates from Omaha to St. Louis and thus, in so far as proportional rates on grain and grain products from the Missouri River to the Mississippi River and points east thereof and north of the Ohio River were concerned, they were the same via the lines that lead directly east from Omaha to the Mississippi River and that do not reach either Kansas City or St. Louis, via the lines that lead directly east from Kansas City and that do not reach either Omaha or the upper Mississippi River crossings, via the lines that lead from both Kansas City and Omaha to St. Louis and that do not reach any of the upper Mississippi River crossings, via the lines that reach from Kansas City and Omaha to both St. Louis and the upper Mississippi River crossings, and via the lines that reach from both Kansas City

and Omaha to the upper Mississippi River crossings, and that do not reach St. Louis. The adjustment of rates on grain to the territory east of the Mississippi and north of the Ohio rivers is not attacked.

It is argued by complainant that Kansas City lies directly in the trend and direction of traffic from Omaha to St. Louis, Cairo, and the other Ohio River crossings, Memphis, New Orleans, and Galveston, and that therefore carriers have no right to disregard the difference in distance in favor of Kansas City. Complainant alleges that if the difference prayed for between the rates from Kansas City and Omaha to those points should be established by reduction in the rates from Kansas City the rates per ton per mile thereafter received for the transportation from Kansas City would exceed the rates per ton per mile now received on the traffic from Omaha to those points. No demand is made that the adjustment prayed for shall be effected by reduction of the rates from Kansas City. Complainant would be equally well satisfied if the difference were established by increasing the proportional rates from Omaha.

Statements are presented showing the increase in the amount of grain handled in Omaha as compared with Kansas City. It is argued on the one hand that this reflects the effect of the rates in question. On the other hand it is argued that Omaha is a new market and naturally grows more rapidly than an old market, and that the amount of grain now passing through the Omaha crossing is not so much greater than it was before the grain market was established there, when no record of it was kept. There is presented a statement which shows that in 1904 out of total shipments of 43,000,000 bushels from Kansas City, 2,500,000 bushels went to the Mississippi Valley and southeastern territory. During the same year out of shipments of approximately 15,500,000 bushels from Omaha, 1,230,000 bushels went to the same territory. In 1905 Kansas City shipped 52,000,000 bushels and Omaha 34,000,000 bushels, and their shipments to the Mississippi Valley and southeastern territory were approximately equal—2,500,000 bushels. In 1906 Kansas City shipped 43,000,000 bushels, of which something over 2,500,000 went to the Mississippi Valley and southeastern territory, and Omaha shipped 40,000,000 bushels, of which something over 4,500,000 went to the same territory. In 1907 Kansas City shipped a total of 49,000,000 bushels, of which 4,000,000 went to the Mississippi Valley and southeastern territory, and Omaha shipped 44,000,000 bushels, of which nearly 8,000,000 went to the same territory.

Defendants and interveners show that competition in the grain fields is keen and close, and argue that the rate adjustment is such as to put Kansas City and Omaha on substantial equality in that regard.

Complainant contends that the local rates from the grain fields to Kansas City and Omaha are not in issue; that it is purely a question of the ability of Kansas City and Omaha to sell in competition with each other in the territory in question.

The present adjustment, under which the proportional rates from Omaha to St. Louis are the same as from Kansas City to St. Louis, was a compromise in 1904 in settlement of a rate war growing out of severe competition between carriers. It has been the subject of more or less dissension ever since. Complainant says: "It is not fair—it is not one of long and peaceable standing." And we are almost led to the belief that there never can be an adjustment of grain rates that will be "of long and peaceable standing."

In *Traffic Bureau, Merchants Exchange of St. Louis v. M. P. Ry. et al.*, 13 I. C. C. Rep., 11, St. Louis interests complained of a rate adjustment on grain and grain products which gave Kansas City an undue advantage over St. Louis in Little Rock (Ark.) territory. There, it was shown that most of the grain going into that territory and handled either by St. Louis or Kansas City interests was drawn from the common territory west of the Missouri River, from which the rates to St. Louis were made on combination on the Missouri River, resulting in a combined rate from point of origin to Little Rock via St. Louis greater than via Kansas City. In some instances the rates from St. Louis to Little Rock were the same as from Kansas City to Little Rock, while there was a difference in distance in favor of St. Louis of 159 miles. In that case, it was said:

If this case were to be decided without any reference whatever to competitive conditions at St. Louis and Kansas City it is clear that rates from St. Louis, by virtue of its greater proximity to Little Rock and Arkansas points, ought to be less than the rates from Kansas City.

And on the competitive question involved it was said:

If the competitive conditions which do exist are to control, then these rates ought all the more to be less from St. Louis, since these two markets deriving their supplies largely from the same source compete in this territory, and therefore rates via the several lines from points of origin to final destination ought to be substantially the same.

An order was entered reducing the rates from St. Louis to Little Rock territory in order to bring about substantial equality of rates from points of origin to Little Rock in combination on St. Louis and in combination on Kansas City. Applying the same principles to this case, it would appear that the rates should be so adjusted that from points of origin of the grain to St. Louis, Cairo, and other Ohio River crossings, Memphis, New Orleans, Galveston, and other Gulf ports, they would be substantially equal from Omaha and from Kansas City, just as they are now substantially equal from Omaha

and Kansas City to the upper Mississippi River crossings, and to territory east thereof and north of the Ohio River.

The present adjustment of rates from Omaha to Texas group points, and to much of the Louisiana territory, and to other territory which must be reached from Omaha, if at all, via Kansas City, is $5\frac{1}{2}$ cents higher from Omaha than from Kansas City, effected by a proportional rate of $5\frac{1}{2}$ cents from Omaha to Kansas City. This is pointed to by complainant as evidence of the reasonableness of its present demand for the establishment of differentials from Omaha to St. Louis $2\frac{1}{2}$ cents above Kansas City to St. Louis, and from Omaha to Cairo and other points named of $3\frac{1}{2}$ cents above Kansas City.

The complaint in this case is supported mainly by argument as to distances. The distances from points of production to Kansas City and to Omaha, respectively, have been ignored except as some computations have been made on average distance. A proportional rate means a part of or a remainder of the through rate or it means nothing at all, and in a case of this kind there must be an examination and consideration of the entire rate from point of production to ultimate destination. It is not sufficient to consider the rates to an intermediate market, nor alone the rates from such market, if the question of discrimination between such markets is to be determined.

Tables of distances and rates from numerous Nebraska points show that in many instances the rate from point of origin is lower to Kansas City than to Omaha, while the distance to Omaha is materially less than to Kansas City.

These tables also show substantial equality of rates to destination points, based, apparently, upon a consideration of the total distance and the total rate. In other words, they appear to show that Kansas City is given credit for its shorter distance from the market in question by equalizing through the rates from points of origin to Kansas City.

For example, from Hastings to Omaha is 152 miles and the rate 11.9 cents. From Hastings to Kansas City is 296 miles and the rate 12.9 cents. From Hastings to Macon, Ga. (a point selected by complainant as illustrative), the distance via Omaha and St. Louis is 1,337 miles, and the total rate is 47.9 cents. Via Kansas City and Memphis the distance is 1,288 miles, and the rate is 47.9 cents.

From Hastings to St. Louis via Omaha the distance is 566 miles, and the rate is 19.9 cents. Via Kansas City the distance is 573 miles, and the rate is 20.9 cents.

From Chester to Omaha it is 156 miles, and the rate is 10.62 cents. To Kansas City it is 248 miles, and the rate is 10.62 cents. To Macon via Omaha and St. Louis the distance is 1,341 miles, and the rate is

46.62 cents. Via Kansas City and Memphis the distance is 1,240 miles, and the rate is 45.62 cents.

From Oxford to Omaha it is 229 miles, and the rate is 13.6 cents. To Kansas City it is 357 miles, and the rate is 13.9 cents. To Macon via Omaha and St. Louis the distance is 1,414 miles, and the rate is 49.6 cents. Via Kansas City and Memphis the distance is 1,349 miles, and the rate is 48.9 cents.

From Strang to Omaha it is 125 miles, and the rate is 11.05 cents. To Kansas City it is 245 miles, and the rate is 11.47 cents. To Macon via Omaha and St. Louis the distance is 1,310 miles, and the rate is 47.05 cents. Via Kansas City and Memphis the distance is 1,237 miles, and the rate is 46.47 cents.

From Edgar to Omaha it is 146 miles, and the rate is 11.9 cents. To Kansas City it is 266 miles, and the rate is 12.4 cents. To Macon via Omaha and St. Louis the distance is 1,331 miles, and the rate is 47.9 cents. Via Kansas City and Memphis the distance is 1,258 miles, and the rate is 47.4 cents.

From Superior to Omaha it is 174 miles, and the rate is 11.9 cents. To Kansas City it is 268 miles, and the rate is 11.9 cents. To Macon via Omaha and St. Louis the distance is 1,359 miles, and the rate is 47.9 cents. Via Kansas City and Memphis the distance is 1,260 miles, and the rate is 46.9 cents.

From Table Rock to Omaha it is 118 miles, and the rate is 9.35 cents. To Kansas City it is 146 miles, and the rate is 6.57 cents. To Macon via Omaha and St. Louis the distance is 1,303 miles, and the rate is 45.35 cents. Via Kansas City and Memphis the distance is 1,138 miles, and the rate is 41.57 cents.

Complainant shows that from a large number of points of origin of grain in southern Nebraska the average distance to St. Louis is somewhat less via Kansas City than via Omaha and the average rate to St. Louis somewhat less via Omaha. It is, however, to be remembered that the traffic of prime interest here is that which moves beyond St. Louis, and that the entire rate from point of origin to final destination is what determines the relative advantages of these markets.

It was stated that this complaint was brought because the quantity of grain coming to Kansas City from Nebraska stations had so materially decreased that a readjustment of the differential relation was necessary, but on further examination it appeared that no records of any kind were available showing the quantity of grain reaching Kansas City from the southern Nebraska stations. On this point complainant's principal witness stated:

We have no way of knowing exactly the point of origin of the specific grain that comes into this market except in a very, very general way.

Another element of competition between carriers that must not be overlooked is the St. Joseph and Grand Island Railway, an independent line extending from Grand Island in southwestern Nebraska through southern Nebraska and northern Kansas to Kansas City, and with no line to Omaha.

The adoption of distance alone as a measure of the rates from points of origin to the primary market would necessarily result in a clear division of the territory between the markets, and would be destructive of competition in most of that territory. It would destroy the long-established adjustment which places Missouri River crossings substantially on a parity in both inbound and outbound rates on traffic generally. Giving to Kansas City all of the advantage that could come to it from a mileage adjustment would give it a monopoly of territory in which Omaha now freely competes with Kansas City, and the application of the same rule to Omaha would give it exclusive purchasing power in territory in which Kansas City now competes with Omaha on equal terms.

If that principle of rate making were adopted here, it would necessarily be followed in other places and eventually to other traffic, and while we are not to be understood as intimating that substantial differences in distance are not to be given consideration, we are not willing to accept the theory of rate construction based purely on distances. Such adjustment would be revolutionary and destructive to established commercial interests of enormous volume and value.

In *Farmers, Merchants, and Shippers' Club v. A., T. & S. F. Ry. et al.*, 12 I. C. C. Rep., 351, the Commission, in discussing the export rates via the Gulf ports versus export rates via Atlantic ports, said:

This condition has of necessity been highly competitive. Eastern lines have extremely disliked to relinquish the traffic which they have enjoyed in the past and which they were built to enjoy, while the southern lines have found it necessary to obtain this traffic almost at the price of existence.

It is admitted that there is a necessary relation in the rates from both Omaha and Kansas City to the Atlantic ports on grain for export. Therefore, if the rates on grain for export through the Gulf ports from Kansas City are reduced sufficiently to put out of balance the highly competitive and nicely adjusted relationship, it would no doubt provoke a corresponding change from Omaha eastward, which in turn would force a reduction from Kansas City eastward. The lines from Omaha through the upper Mississippi River crossings and that do not reach St. Louis, the lines which lead eastward from Kansas City to St. Louis and which do not reach the upper Mississippi River crossings, and the lines leading from Omaha to St. Louis which do not reach the upper Mississippi River crossings will, each of them, in protection of its own interests, see to it that its rates are as low and

as favorable on grain from either Kansas City or Omaha to territories of large consumption or to export ports as the rates of any of the others.

Complainant's principal witness testified on this point that there is a relation between the rates on grain for export moving through St. Louis and the rates through the upper Mississippi River crossings; and that if the rates to St. Louis were disturbed and a similar change was not made through the other crossings it would affect such other crossings.

It is admitted that the rates on grain from Kansas City to St. Louis for export via Atlantic ports can be no higher or different than the rates on similar traffic from Omaha through other Mississippi River crossings.

Complainant concedes that in order to bring about equalization by this proposed method of adjustment it would be impossible to avoid a transit arrangement on some traffic at one or more points.

It is apparent that under the proposed arrangement the rate from Omaha to St. Louis would be $2\frac{1}{2}$ cents higher than from Kansas City to St. Louis and that if that grain were reshipped from St. Louis to the east or to Atlantic ports for export, refund would have to be made of the difference between the Omaha rate and the Kansas City rate. It is difficult to see how under such an arrangement carriers could prevent such refund on grain actually shipped from Kansas City or what would prevent such concession unless the identity of the grain coming from Omaha were preserved. The only alternative would seem to be to require the grain coming from Omaha to St. Louis for the east to move through St. Louis without unloading. Such a requirement would certainly and naturally bring complaint of discrimination from the St. Louis people. It does not seem that a transit arrangement or proportional rate could be applied from St. Louis either to the east or to the southeast as proportional rates are applied from Kansas City, because here the purpose sought is to maintain a difference between the rates on grain coming from Omaha and Kansas City, respectively, when destined to a particular territory.

In transportation of low-grade commodities that move in bulk and in large quantities it is a long-established custom to group or blanket a number of stations or a large expanse of territory. Such rate adjustments necessarily to some extent disregard distances. If strictly distance rates were applied to grain moving from points of origin it is apparent that at a certain distance from a market that is prepared to purchase the surplus the rate would be prohibitive.

The Omaha Grain Exchange, intervener, presents a showing that to grant the prayer of complainants herein would necessitate a

change in inbound rates from Nebraska points to Omaha and Kansas City, or give over entirely to the Kansas City market the greater part of the southern half of the state of Nebraska. The carriers having lines from that territory to Omaha and not to Kansas City would, of course, not permit all of that traffic to move to Kansas City, and a readjustment of their rates would be made with the result that Kansas City would have gained no advantage. Witness for the Omaha interests testified that Omaha is now entirely out of the Texas and Louisiana trade at all points in Nebraska south of the main line of the Union Pacific Railroad, because of Kansas City's ability to buy in that territory for shipment to Texas and Louisiana points at 5½ cents per 100 pounds less than can Omaha.

The annual reports of the Kansas City and Omaha markets show that from Chicago, Burlington & Quincy Railroad stations, principally in southern Nebraska, Kansas City in 1907 received 13,023 cars of grain, and that Omaha received from the same stations 9,394 cars.

It is shown that in an intermediate belt running in an easterly and westerly direction, somewhat irregular in shape, taking in part of the northern portion of Kansas and a substantially equal part of the southern portion of Nebraska, the inbound rates to Kansas City and to Omaha are equal. The distance from the producing points in this equal zone is materially less to Omaha than to Kansas City. South of this zone a differential against Omaha makes it impossible to ship to that market. North of that zone Kansas City's rates gradually increase and generally the rates favor Omaha. It appears that if the prayer of complainant were granted, Kansas City would be able to buy grain for the southeast and Mississippi Valley points upon an equality with Omaha at stations within 30 miles of Omaha.

One important carrier, the Illinois Central, has its own lines from Omaha to Memphis through one of the upper Mississippi River crossings. It does not reach Kansas City. It does not reach St. Louis from the west except through said upper Mississippi River crossing and a roundabout way. Is it to be expected that that company would permit rates from Kansas City to Memphis materially lower than from Omaha to Memphis?

At the time the present relative adjustment was established, Omaha 1 cent more than Kansas City on grain to Mississippi Valley and the southeast, an adjustment was also made to Minneapolis, Kansas City 1 cent above Omaha. It so happens that most of the grain that would move from Kansas City to Minneapolis would be wheat for milling and that most of the grain that would move from Kansas City or Omaha to the southeast would be corn.

As indicative of the probable effect of granting the prayer of complainant in this case, it is noted that from Minneapolis, located 375

miles north of Omaha, the rate to Memphis is now 2 cents more than from Omaha. If the rate from Omaha to Memphis were increased $2\frac{1}{2}$ cents and the rate from Minneapolis to Memphis were not changed, Minneapolis would be able to ship to Memphis at a lower rate than would Omaha.

The record shows that the Missouri Pacific and the Frisco System undertook to create a more favorable adjustment from Kansas City to the southeast, and the latter published a tariff providing that on grain from points in southern Nebraska, via Kansas City to Memphis and beyond, it would accept for the haul from Kansas City to Memphis the balance of the published through rate with a minimum charge of 9 cents per 100 pounds, and in numerous instances the tariff carried specific proportions of less than 9 cents. It was stated that this tariff had probably not attracted to those lines more than two or three hundred cars of grain, and witness for the Kansas City interests testified that it had not been of any value to that market.

In an adjustment of this kind, as the Commission has frequently said, we must scrutinize carefully not only the entire rate involved and the interests of the places and persons specially represented in the pleadings; but the certain and logical and probable effect of making a change. It must be borne in mind that in *Farmers, Merchants and Shippers Club, supra*, the Commission considered the question of the producer's right to reasonable rates via direct routes to the nearest export port and to the nearest large consuming territory. In the present case we have the competition of primary markets, both of which are interested in the question solely from the standpoint of the profits to be gained from gathering in and redistributing to consuming territories and export ports the surplus grain in the territory lying west of them, and in which both should have, and apparently do now have, substantially equal opportunities.

It is also to be noted, not from the record in this case, but from common knowledge and from tariffs, that large quantities of grain move into the southeast through the Ohio River crossings from Chicago and other great grain markets. Grain can move through Chicago to the southeast from Omaha or from Kansas City on the same rate. If the rate from Kansas City to the southeast were materially reduced via St. Louis it is practically certain that competitive conditions would bring equalization of that rate from Omaha via Chicago.

The Kansas City grain interests file complaint herein. The Omaha grain interests, the carriers serving Kansas City or Omaha, the St. Louis grain interests, the Wichita grain interests, the farmers

and shippers of Kansas and the millers of Kansas are parties to this case and all protest against complainant's demands. The interests of numerous carriers not directly parties to the suit are necessarily involved. It is manifest that the prayer of complainant can not be granted without serious disturbances in rates, and there is no reasonable assurance that after such disturbances a more equitable or satisfactory adjustment would be reached. It is not seen how any substantial relief could be accorded to Kansas City in this matter without the creation of much discrimination and great confusion in transportation and commercial circles, and we are therefore forced to the conclusion that the complaint must be dismissed.

16 I. C. C. Rep.

No. 1909.
EDWIN BEGGS
v.
WABASH RAILROAD COMPANY.

Submitted February 16, 1909. Decided May 3, 1909.

Reparation awarded on account of imposition of an unreasonable freight charge on a shipment of corn from Bates, Ill., to Detroit, Mich., because of carrier's failure to supply a car of the size ordered by the complainant.

Edwin Beggs for complainant in person.
N. S. Brown for defendant.

REPORT OF THE COMMISSION.

PROUTY, *Commissioner*:

On April 20, 1908, the complainant made shipment of 46,440 pounds of corn from Bates, Ill., to Detroit, Mich. The tariffs of the defendant provided that in case of grain the minimum should be the marked capacity of the car, but in no case less than 40,000 pounds on all cars of marked capacity up to 80,000; and the complainant applied for a 40,000-pound car in which to make his shipment, but was furnished a 60,000-pound car instead.

The regular tariff rate of 10½ cents per 100 pounds was assessed upon 60,000 pounds, and the complainant paid \$63 as transportation charges. He claims that he should have been assessed upon the actual weight of the shipment and has therefore been overcharged in the sum of \$14.24.

Following *American Lumber & Mfg. Co. v. Southern Pacific Co. et al.*, 14 I. C. C. Rep., 561, and *General Chemical Co. v. Norfolk & Western Ry. Co.*, 15 I. C. C. Rep., 349, the claim of the complainant is sustained and reparation awarded with interest in the above sum.

We are also of the opinion that the tariffs of the defendant are unreasonable and unlawful in failing to provide that when a larger capacity car is furnished instead of the smaller capacity demanded the minimum applicable to the smaller capacity car should be observed and that its tariffs should be amended in this particular.

An order will be issued accordingly.

No. 1838.

DAVENPORT COMMERCIAL CLUB

v.

YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY
ET AL.

Submitted March 1, 1909. Decided May 10, 1909.

Rates on cypress lumber from Baden and Kirkpatrick, Miss., to Davenport, Iowa, that were higher than from Tutwiler and Drew, Miss., respectively, to Davenport, found unreasonable. Reparation awarded.

C. A. Steel for complainant.

Blewett Lee for Illinois Central Railroad Company and Yazoo & Mississippi Valley Railroad Company.

H. Gower for Chicago, Rock Island & Pacific Railway Company.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

Complainant is a commercial organization of Davenport, Iowa, and it brings this complaint in behalf of the T. W. McClelland Company, a concern engaged in the manufacture of sash, doors, and blinds at that place.

Complaint was filed on November 6, 1908, and the case is submitted to the Commission for hearing and determination upon the allegations contained in the pleadings and an agreed statement of facts. From the record, as made, the following facts appear:

Between the dates of March 28 and September 1, 1908, the said T. W. McClelland Company shipped from Baden, Kirkpatrick, and Tutwiler, Miss., to Davenport, Iowa, via the lines of defendants, certain cars of cypress lumber, the details of which, together with the charges collected thereon, are set forth in a filed statement.

It is stated in complaint and answers that the tariff rates on said shipments were, from Baden and Kirkpatrick, 22 cents per 100 pounds, and from Tutwiler, 21 cents per 100 pounds, in carloads, minimum weight 30,000 pounds. Illinois Central tariff, however, shows the rates as 23 cents from Baden and Kirkpatrick.

The aggregate weight of 27 carloads shipped from Baden was 1,170,300 pounds, upon which freight charges were collected in the

sum of \$2,663.06. On one shipment from Kirkpatrick, weighing 35,900 pounds, the freight charges collected were \$78.98. On one shipment from Tutwiler, weighing 49,800 pounds, a rate of 22 cents per 100 pounds was applied, and charges amounting to \$109.56 were collected. The defendants admit that this was an overcharge of 1 cent per 100 pounds above the lawful rate.

Baden, Miss., is a shipping point on the line of the Yazoo & Mississippi Valley Railroad, and shipments from Tutwiler to Davenport are carried through Baden. Kirkpatrick, Miss., is a shipping point on the same railroad, and shipments from Drew to Davenport are carried through Kirkpatrick. Complainant alleges that the higher rates that were in effect from Baden and Kirkpatrick, Miss., to Davenport, Iowa, were unjust and unreasonable, and that the maintenance of higher rates from the intermediate points than were contemporaneously in effect from Tutwiler and Drew constituted a violation of section 4 of the act to regulate commerce. Defendants admit that the rate on cypress lumber from Baden, Miss., to Davenport, Iowa, should not be higher than the rate from Tutwiler, and that any rate on said commodity from Baden, Miss., or from Kirkpatrick, Miss., to Davenport, Iowa, in excess of 21 cents per 100 pounds was, at the time these shipments moved, unjust and unreasonable under the circumstances and conditions as alleged in the complaint. The unreasonableness of said rates as alleged and admitted resulted from the adjustment of rates obtaining at the several points. It is not admitted that the rates were either of them unreasonable *per se*. The maintenance of a higher rate from Baden to Davenport than from Tutwiler to Davenport was clearly in violation of section 4 of the act, and therefore unjustly discriminatory. The same is true as to the maintenance of a higher rate from Kirkpatrick than from Drew. This discrimination was removed by making the rates the same from all the points named, effective October 1, 1908.

We think the unjust discrimination just referred to resulted in damage to the T. W. McClelland Company on the several shipments covered by the complaint to the extent that the charges from Kirkpatrick and Baden exceeded what the charges would have been under the rates from Tutwiler and Drew at the time the shipments moved. *Sylvester v. P. R. R. Co. et al.*, 14 I. C. C. Rep., 573.

Defendants admit the correctness of complainant's claim for reparation in the sum of \$214, but examination shows that that amount is in excess of what would be due on the basis of 1 cent per 100 pounds as applied to the total weight of the shipments. The shipments were carried in 29 cars, each of which was loaded above the minimum weight, and the total weight of all was 1,256,000 pounds, on which a

refund of 1 cent per 100 pounds would amount to \$125.60. This includes the straight overcharge of 1 cent per 100 pounds on the shipment from Tutwiler. A computation of the amounts due on the various carloads, based on the rate of 22 cents per 100 pounds applied to the weight of each shipment, demonstrates that defendants overcharged complainant, in excess of the 22-cent rate, on shipments from Baden, in the following amounts: One shipment, April 2, \$3.32; two shipments, May 13, \$74.96; one shipment, August 3, \$10.08; total, \$88.36.

The total amount of erroneous overcharges on the basis of a 22-cent rate, exclusive of the Tutwiler shipment, is \$88.36, which, added to the amount of reparation that should be paid on the basis of 1 cent per 100 pounds on the total weight of the shipments, results in a total of \$213.96, which sum the said T. W. McClelland Company is entitled to recover from the defendants, together with interest.

The application of rates to these shipments, the erroneous collections thereon, and the inaccurate statements as to rates contained in complaint and answers do not indicate much care in these matters or a disposition to consider the law very seriously.

It follows that, upon proper application and order within the statute of limitations, similar reparation should be accorded to all persons who made shipments of cypress lumber from Baden or Kirkpatrick, Miss., to Davenport, Iowa, or other points where this principle would apply, while the higher rates were maintained from Baden and Kirkpatrick than from Drew and Tutwiler.

No opinion is expressed as to the reasonableness of the present rates.

An order will be entered in accordance with these views.

16 I. C. C. Rep.

No. 2050.

SUNDERLAND BROTHERS COMPANY

v.

CHICAGO & NORTHWESTERN RAILWAY COMPANY
ET AL.

Submitted March 8, 1909. Decided May 10, 1909.

Rate of \$5.20 per ton on soft coal from Sterling, Ill., to Wausa, Nebr., found to be unreasonable. Rate of \$2.70 per ton prescribed, and reparation awarded.

C. E. Child for complainant.

B. T. White for Chicago & Northwestern Railway Company and Chicago, St. Paul, Minneapolis & Omaha Railway Company.

George H. Crosby and *C. E. Spens* for Chicago, Burlington & Quincy Railroad Company.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

July 24, 1907, the Ziegler District Colliery Company made a shipment of soft coal, weighing 51,000 pounds, from Christopher, Ill., to complainant, at Wausa, Nebr. The consignee routed the shipment via the Chicago, Burlington & Quincy to Sterling, Ill., from thence via the Chicago & Northwestern, and Chicago, St. Paul, Minneapolis & Omaha to destination. There was no published through rate on coal in carloads from Christopher to Wausa via the route the shipment moved. The charges were computed by adding the local rate from Christopher to Sterling to the rate from Sterling to Wausa. No complaint is made against the rate of \$1.14 per net ton from Christopher to Sterling. It is alleged that the rate of \$5.20 per net ton, charged by the Chicago & Northwestern and the Chicago, St. Paul, Minneapolis & Omaha from Sterling to Wausa is unreasonable, to the extent that it exceeded \$2.70 per net ton.

Defendants admit that this \$5.20 rate was unreasonable and that \$2.70 is a reasonable rate. And we so find. They express a willingness to pay reparation in the sum of the difference between the amount collected and what would have been collected had a \$2.70 rate applied.

It is asserted by defendants that no coal moves between the points involved via the route specified by the consignee in this case, and that no purpose could be served by ordering the \$2.70 rate to be maintained between the points in question. It appears, however, that the rate charged from Sterling to Wausa was in accordance with the published tariffs and is conceded to be unreasonable. Other shipments may move over that route, and the absence of a reasonable rate would lead to other proceedings of this character. We find that the \$2.70 rate will be reasonable for the future.

An order for reparation in the sum of \$63.75 and interest will be entered against the Chicago & Northwestern Railway and the Chicago, St. Paul, Minneapolis & Omaha Railway, which defendants are alone responsible for the excessive charge. Defendants, the Chicago & Northwestern Railway and the Chicago, St. Paul, Minneapolis & Omaha Railway, will also be required to establish on or before July 1, 1909, and for a period of not less than two years thereafter to maintain a rate not to exceed \$2.70 per ton on shipments of bituminous coal in carloads from Sterling, Ill., to Wausa, Nebr., when such shipments originate at Christopher, Ill.

16 I. C. C. Rep.

No. 1555.

WILLIAM M. DAVIS

v.

WEST JERSEY EXPRESS COMPANY ET AL.

Submitted March 15, 1909. Decided May 10, 1909.

Exaction of double merchandise rates for the transportation of small live animals in secure containers, and when such animals do not require feeding or watering en route, found to be unreasonable. Merchandise rates should apply.

William M. Davis for complainant in person.

George Stuart Patterson, George V. Massey, and Stacy B. Lloyd for West Jersey Express Company.

T. B. Harrison, jr., and George W. Field for Adams Express Company.

O'Brien, Boardman, Platt & Littleton, by George W. Field, for United States Express Company.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

Complainant is engaged at Vineland, N. J., in the business of breeding and raising small animals (guinea pigs, rabbits, and rats) for laboratory and scientific purposes, which he ships via the lines of defendants to various points in the United States, principally Glenolden, Marietta, and Philadelphia, Pa.; New York, N. Y.; and Chicago, Ill.

Defendants charge double merchandise rates on such shipments, which rates are alleged to be unjust and unreasonable in and of themselves and relatively. It is prayed that defendants be required to establish rates on small animals when shipped for laboratory and scientific purposes the same as those applicable on articles taking merchandise rates. Shipments are crated, and it is alleged that the animals do not require any special care en route.

The defendants, answering, deny that the charges are unjust and unreasonable *per se* or relatively, and aver that the shipments require special care in transit. The West Jersey Express Company has been absorbed by the Adams Express Company.

There appears to be some misapprehension concerning the terms of the classification applicable to the transportation of these animals. The conditions under which they will be received for shipment are as follows:

Received only upon the execution of the company's live-stock contract, except that birds, cats, ferrets, guinea pigs, hares, mice, opossums, prairie dogs, rabbits, squirrels, and pet stock of similar character, upon which a value of not exceeding \$5 for each bird or animal has been declared, may be accepted on the ordinary freight receipt, subject to owners' risk of injury, death, or escape.

The classification provides:

Animals and birds, live, n. o. s., double mdse.

Under the heading "Live stock" are included horses, mules, cattle, jacks, colts, ponies, burros, calves, goats, hogs, and sheep, which, generally speaking, when crated or in carloads take merchandise rates. Pigeons, homing and common, take merchandise rates. There is also an exception to the provision for animals and birds, live, n. o. s., taking double merchandise rates, that where the merchandise rate is \$2 or more per 100 pounds the rate will be merchandise, but this exception does not apply to camels and elephants.

Complainant's contention is based upon the assumption that the double merchandise rates were established applicable to pet stock, whereas he is engaged in the commercial pursuit of furnishing laboratories and institutions of like character with small live animals which he produces for scientific purposes. It is contended also that he should be placed upon a parity with shippers of calves, sheep, pigeons, etc. It is shown that the animals are shipped in specially constructed containers and require no feeding or watering in transit.

By stipulation entered into between the parties it was agreed that the Official Express Classification at present applicable to guinea pigs, rabbits, and rats would be changed by inserting in its proper order:

Guinea pigs, rabbits, and rats, when shipped to medical or scientific laboratories or institutions, mdse.

Defendants agreed to maintain this provision for a period of two years, and the parties stipulated that upon that agreement the case should be submitted to the Commission for determination.

There is some indication to the effect that the rates complained of were in use several years prior to the defendants becoming subject to the provisions of the act to regulate commerce, and that they were established to meet conditions then existing and did not have in mind the transportation of small live animals for use in scientific purposes. This commercial business has grown up, and probably the circumstances attending the transportation of the animals and the conditions under which they move are different from those

formerly surrounding the transportation of pets. Necessarily, however, the determination of a reasonable rate rests in the service performed, the risk involved, the value of the article, and the degree of care required to be exercised. The use to which articles are put, without difference in the articles and without dissimilarity in conditions under which the transportation is performed, may not lawfully be made the basis for a difference in charge. The Commission can not sanction the view that because certain live animals are used for scientific purposes they should be transported at a lower rate than if used for food or other purposes.

It is easily assumable that certain animals require more care than others. All are not in the same category from a transportation standpoint. The risk is greater as to some; the volume of traffic is heavier as to others, and these, among others, are legitimate reasons for differences in rates. The express companies recognize the necessity of establishing rates which will permit the movement of commodities. For instance, their "general specials" rates apply on live poultry. The care in handling, the service performed, the space occupied, the liability of damaging other commodities being transported at the same time, are certainly not essentially greater in transporting guinea pigs than in transporting live poultry, pigeons, pigs, goats, etc. No substantial reason has been advanced for charging double merchandise rates when the rate is less than \$2. The fact that the rate is less than \$2 should not be controlling as to whether or not a double rate must be charged. It might easily result in a higher charge for a shorter than for a longer haul, but it is not necessary to decide that question. We are of the opinion that for the transportation of guinea pigs, rabbits, and rats double merchandise rates are unreasonable, and that when such animals are shipped in secure containers and do not require feeding or watering en route the rates should not exceed merchandise rates. An order to that effect will be entered.

No. 1942.

MILWAUKEE FALLS CHAIR COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.

Submitted March 18, 1909. Decided May 11, 1909.

Rate of 17½ cents per 100 pounds for transportation of chairs, in carloads, from Grafton, Wis., to Chicago, Ill., found unreasonable to the extent that it exceeds 15 cents per 100 pounds, the rate in force prior to January 3, 1908, and subsequent to September 1, 1908; and the exaction of switching charges upon two small cars furnished by defendant, for its convenience, in lieu of one large car ordered by complainant, held not to be in accordance with defendant's tariff provision. Reparation awarded.

J. W. Collins for complainant.

William Ellis and *F. G. Wright* for defendant.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

Complainant is a manufacturer of chairs at Grafton, Wis., a point on defendant's line between Plymouth, Wis., and Chicago, some 25 or 30 miles south of Plymouth. Prior to January 3, 1908, the rate on chairs in carloads, 12,000 pounds minimum, from Plymouth to Chicago was 15 cents per 100 pounds, and the tariff contained a long and short haul provision which had the effect of giving Grafton the same rate. A new tariff was issued January 3, 1908, which canceled the previous issue and eliminated the long and short haul provision. This tariff was reissued September 1, 1908, extending the Plymouth rate to Grafton on shipments of chairs to Chicago. Between January 3, 1908, and September 1, 1908, complainant shipped 9 carloads of chairs from Grafton to Chicago, weighing 12,000 pounds each, and was charged on these shipments a rate of 17½ cents per 100 pounds. Defendant admits and we find that this charge was unreasonable and that the tariff should have provided for a 15-cent rate. The difference between the amount actually collected and the amount that would have been collected at a 15-cent rate is \$27.

On May 5, 1908, a carload shipment was made, not included in the 9 above mentioned, on which complainant was charged \$42.70. This charge resulted from error in calculating the tare weight of the car at 23,600 pounds, when the tare weight was actually 39,000

pounds, and from application of the 17½-cent rate. As the reasonable rate would have been 15 cents for 12,000 pounds, or \$18, there was an overcharge on this car of \$24.70.

Shipments of chairs from Grafton to Chicago are governed by rules published in Western Trunk Line Railway circular, I. C. C. A-1, which provides, Rule 415, as follows:

When one car can not be furnished to accommodate the minimum weight of light and bulky articles on which carload ratings are provided in tariffs, two cars may be furnished, charges to be assessed on basis of lowest rate and highest minimum weight for the one car ordered. Any excess weight above the minimum to be charged at carload rate. This rule will not apply unless size of car ordered is in general service. This rule will not apply where the combined length of the two cars exceeds 80 feet.

The tariff of defendant, I. C. C. No. B-1055, provides in Rule 132 as follows:

Switching.—Unless otherwise provided rates on carload shipments covered by tariffs of this company will include switching charges of connecting line at point of shipment or destination, or both, where freight charges are \$15 or more.

On May 12, 1908, complainant ordered a 50-foot furniture car for a shipment of 12,000 pounds of chairs to Chicago. Defendant was unable to furnish a car of the size ordered, and for its own convenience furnished two smaller cars, charging for a minimum of 12,000 pounds on each of the two cars at a rate of 17½ cents, and also \$3.50 for switching one of the cars in Chicago, or a total of \$45.50. The charge should have been at the rate of 15 cents on a single minimum of 12,000 pounds. This the defendant admits, under its rule for furnishing two cars in place of one, and therefore concedes that complainant is entitled to reparation accordingly.

The switching rules of defendant do not expressly provide for switching two cars in place of one, but we think its obligation to do so is to be inferred from the provision for one-car rate when two cars are furnished. It seems clear to us, where a carrier absorbs switching charges on carload shipments and for its own convenience furnishes a shipper two cars in accordance with its rules in that regard, making the same rate as though one car had been furnished, that switching charges should be absorbed on both cars; and we are of opinion that the rules in question should be so construed. We therefore hold that complainant is entitled to reparation for the switching charge imposed in this case, or a total of \$27.50 on this shipment.

On February 8, 1908, complainant made a shipment of 1,200 pounds of chairs to Chicago, on which a rate of 64 cents per 100 pounds was collected, although the less than carload rate provided in defendant's tariff was 45 cents. This was an overcharge of \$2.28, which the defendant should refund without an order of the Commission.

The defendant will be required to pay complainant the sum of \$79.20 with interest, and an order will be entered accordingly.

No. 1587.
ENTERPRISE FUEL COMPANY
v.
PENNSYLVANIA RAILROAD COMPANY ET AL.

Submitted December 12, 1908. Decided April 13, 1909.

1. A city which embraces a wide area within its limits may, because of physical or business conditions, comprise one or more shipping communities to and from which through routes should be established.
2. A shipper is not entitled to a through route merely because he may not be as conveniently served by one railroad as by another.
3. On complaint asking for establishment of a through route and joint rate via defendants' lines from Alden, Pa., to the Hillen and Walbrook stations of the Western Maryland Railroad in Baltimore, Md.; *Held*, That (1) the through route at present existing to the terminals of the Pennsylvania Railroad Company in Baltimore is a satisfactory through route to Baltimore proper, in which the Hillen station of the Western Maryland is located; and that (2) Walbrook, although lying within the limits of Baltimore, is a distinct transportation point to which no satisfactory through route exists. Defendants ordered to establish a through route and joint rate to that point.

W. S. Bryan, jr., for complainant.

George Stuart Patterson for Northern Central Railway Company and Pennsylvania Railroad Company.

H. L. de Forest for Central Railroad Company of New Jersey.

G. R. Gaither for Western Maryland Railroad Company and receiver thereof.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

A high grade of anthracite coal comes from the Alden colliery in the Wyoming coal district of Pennsylvania. The complainant corporation has coal yards at Walbrook, a suburban station within the municipal limits of Baltimore, and at Hillen station, in the heart of the city. Both of these yards are at stations reached only by the Western Maryland Railroad. Petition is made for the establishment by this Commission of a through route and a joint rate on anthracite coal between Alden, Pa., on the Central Railroad of New Jersey and these two stations, Walbrook and Hillen, on the Western Maryland

Railroad, under that provision of the act to regulate commerce reading (sec. 15):

The Commission may also, after hearing on a complaint, establish through routes and joint rates as the maximum to be charged and prescribe the division of such rates as hereinbefore provided, and the terms and conditions under which such through routes shall be operated, when that may be necessary to give effect to any provision of this act, and the carriers complained of have refused or neglected to voluntarily establish such through routes and joint rates, provided no reasonable or satisfactory through route exists, and this provision shall apply when one of the connecting carriers is a water line.

The essence of this section is that the Commission may, after hearing on a complaint, establish a through route and a joint rate, provided no reasonable or satisfactory through route exists. The answer of the defendant railroads (excepting the Western Maryland Railroad Company and the receiver thereof) is that a reasonable and satisfactory through route at present exists between Alden and the city of Baltimore. The Pennsylvania Railroad Company (and we shall herein treat the Northern Central Railway Company as the Pennsylvania) has provided and set apart certain lands, which it rents at a reasonable figure to private parties who use the same as coal yards, and to these yards the Pennsylvania Railroad makes delivery of Alden coal at its regularly published rates of \$2.05 or \$2.10 per ton, the difference in the rate depending upon the route by which the coal is carried to Baltimore. There is, therefore, says the Pennsylvania, a reasonable and satisfactory through route to the city of Baltimore, as a "receiving community;" and it is most insistently urged that—

the requirements of existing reasonable or satisfactory through routes contained in the proviso of section 15 is satisfied by the existence of such routes as reasonably or satisfactorily serve shipping or receiving communities and that it is not essential that such routes should serve private stations or terminals on the lines of other railroads in that same shipping or receiving community.

Here, then, we have a very distinct issue. Walbrook, a station on the Western Maryland line at a distance of 3 or 4 miles from the main Pennsylvania coal terminal in Baltimore, asks that it may have a through route established between it and a point on the Central Railroad of New Jersey in Pennsylvania in order that it may receive a supply of anthracite coal. There is physical connection between the Western Maryland and the Pennsylvania at Hanover, 50 miles from Baltimore, but no through route of any character whatsoever exists between the mines and Walbrook. No rates, either joint, proportional, or local, exist by which such coal may be carried from point of origin to Walbrook. There, therefore, can be no question as to the reasonableness or the satisfactoriness of an existing through route to Walbrook station, for none exists of any character to that point.

The answer of the opposing carriers is that Walbrook is but a station within the city, at no great distance from the terminal of the Pennsylvania in Baltimore itself, and that it may secure its supply of Alden coal by hauling it from the Pennsylvania terminals. The Pennsylvania road has provided special facilities for the delivery of coal in Baltimore, and to divert this traffic from the Pennsylvania line to the Western Maryland line to meet the needs of Walbrook, or any other near-by station, would be to deprive the Pennsylvania of the long haul of such traffic which it has prepared by expenditure of thought and money to adequately handle.

The physical conditions touching the delivery of Alden coal at the heart of the city are less simple. The Enterprise Fuel Company has its coal yard at the Hillen station of the Western Maryland Railroad, which is a mile removed from the Bolton yard of the Pennsylvania road, at which place the Pennsylvania has erected coal dumps which it rents to coal dealers to whom it makes delivery of Alden coal on the through rate. No rates, joint or otherwise, are in force under which Alden coal may be delivered at Hillen station, and no route, satisfactory or unsatisfactory, exists from the Alden colliery to this station. The Pennsylvania also makes delivery at what is known as President street station, and at Jackson's wharf, to which latter point the cars are hauled through the streets by horses, a distance of 2 miles.

We are here presented with a question of novel impression and one of wide importance—whether under the act to regulate commerce the existence of a practicable transportation route by one delivering carrier into a city the size of Baltimore is to be regarded as a reasonable and satisfactory through route for the shipping and consuming public who make up that city.

In the first paragraph of the first section of the act the duty is imposed on every carrier "to establish through routes and just and reasonable rates applicable thereto." This is followed in the same section with a paragraph in which it is commanded that carriers shall construct, maintain, and operate upon reasonable terms switching connections with lateral branch lines of railroad or private side tracks which may be constructed to connect with a railroad where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same. Turning to section 3, we find the second paragraph requires that every common carrier shall—

afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines, but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business.

The one other provision of the law touching this question is that quoted above from section 15 by which the Commission is empowered to establish through routes and joint rates, provided no reasonable and satisfactory through route exists.

Reading all of these provisions together, may it not be said that Congress has directed that every point in the United States having traffic or passengers to transport shall be connected with every other point in the United States by a reasonable or satisfactory through rail or rail-and-water route, as to which just and reasonable rates shall be made applicable? It can not, we think, be fairly said that all railroads must unite in through routes between all points, although the language of section 1 taken by itself might so indicate; but this language must be subjected to the implied limitation found in section 15, wherein the power is granted to establish joint rates and through routes only where no reasonable and satisfactory through route exists. From this it would appear that if a reasonable and satisfactory through route between two points does exist, another route can not be compelled.

There are two expressions in the clauses of the act above quoted which limit the general provision of section 1 first referred to. One is the proviso in section 15, the other is the last clause of section 3, reading:

This shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business.

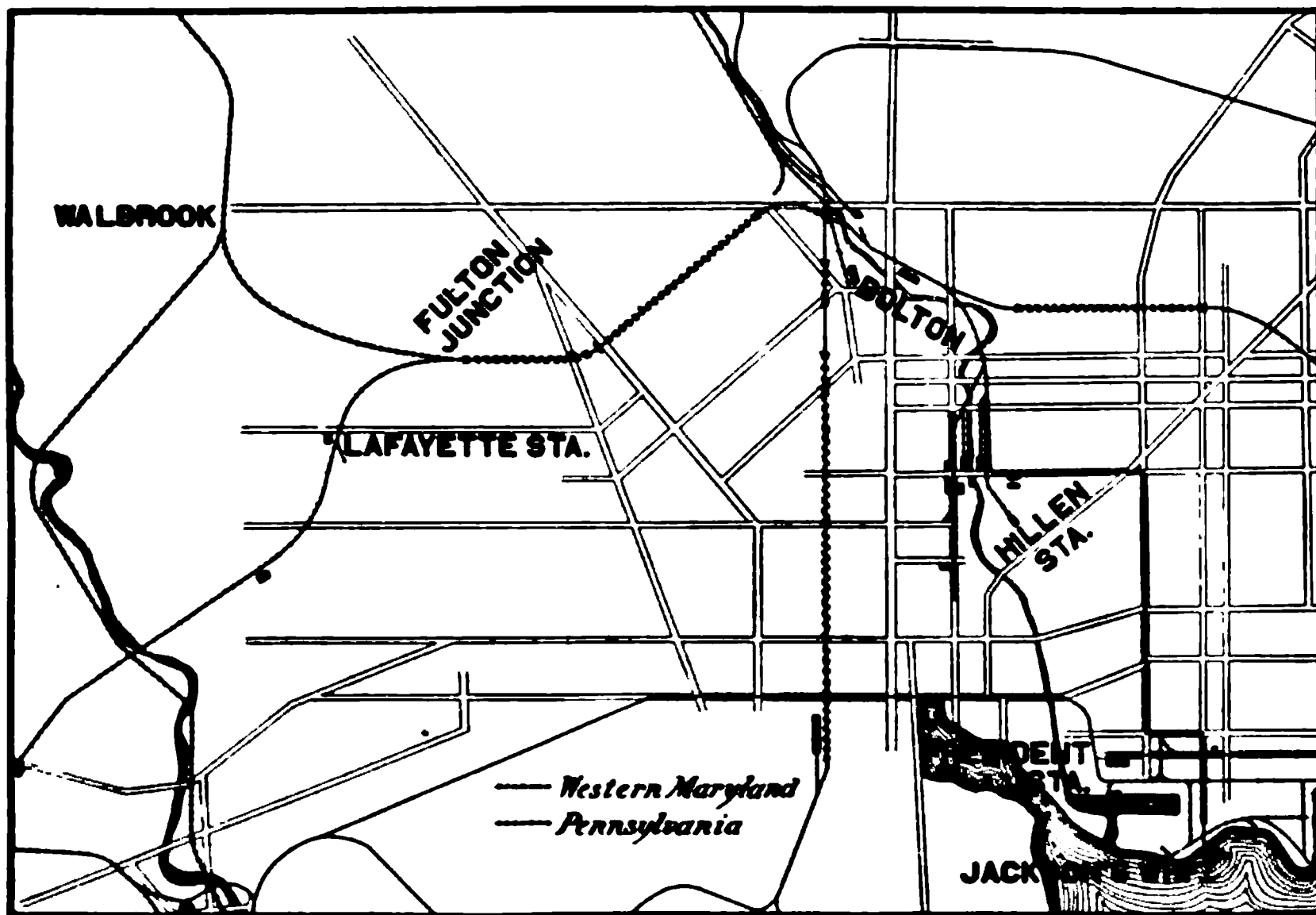
In the present case the establishment of a through route and joint rate to the Western Maryland station in the city of Baltimore would not conflict with the provision of this section, inasmuch as no carrier would be required to give the use of its track or terminal facilities to another carrier engaged in like business.

We come thus directly to the one question, Is there a reasonable and satisfactory through route for the carriage of coal from Alden to the consignees of coal at Baltimore, there being one such route to that city?

We are of opinion that there may be a through route from a given point of origin to a city which is satisfactory, and yet another through route from the same point to another section of the same city may be necessary. A railroad may not say that it can retain a monopoly of a certain traffic no matter what its service or what the public necessities require. A shipper, on the other hand, is not entitled to a through route because he may not be as conveniently served by one railroad as another. A city the size of Baltimore may, because of physical or business conditions, comprise one or more shipping communities to and from which through routes should be established. The city of Greater New York, which is perhaps 17 miles long, should not be considered for transportation purposes as but a single point—

a single station. A through route to one railroad station in Chicago is not necessarily a satisfactory through route to a portion of the city 20 miles distant. A city of 600,000 population and a prairie village are not the same from a transportation standpoint, but the same principle should be applied to both in considering the satisfactoriness of a through route. What does public necessity and the proper conduct of business require?

The administration of this law has been placed in our hands that the public may be protected against the adoption and practice by carriers of methods inimical to the general good, and we must give to the law such interpretation as we think the Congress would apply in each individual case, taking its mind from the language which it has used. In this view of the law we find ourselves constrained to grant the petition of complainant for the establishment of a through route to Walbrook and to deny the petition as to Hillen station.



Walbrook should be regarded from a transportation point of view as a distinct and separate community. To be sure it is within the municipal boundaries of Baltimore, but a municipal charter is not determinative of the relations which a community bears to the railroad which gives it service. To deny to Walbrook railroad delivery of anthracite coal of a kind which it desires is to permit the railroads to determine what kind of coal the people of that growing suburb shall use, and this we do not understand to be within the legal functions of a common carrier.

Hillen station, as the accompanying map shows, is a mile from the Bolton coal terminal of the Pennsylvania line. Delivery of Alden

coal is made, however, at points further distant from Bolton than is Hillen station, but these points are not within the yards of another railroad. The complainant's case may be summarized in this fashion:

This company is one of the largest fuel dealers in Baltimore. We sell upward of 50,000 tons of coal per year and could sell 25,000 tons of Alden coal if we could get it. But the supply is denied us because to handle it from the Pennsylvania team tracks would be impracticable, inasmuch as we would be compelled to cart it for a mile, and this expense would more than offset all the margin between cost at the station and selling price. This margin is but from 25 to 35 cents a ton, and of course we must meet the competition of other dealers who receive their coal at the Pennsylvania yard. Therefore, if we are denied a route over the Western Maryland tracks, we are prohibited from engaging in the sale of this coal.

The fact remains that the complainant has placed itself on the Western Maryland tracks, and this Commission is asked to create a new transportation route to meet the needs of a shipper who has placed itself at this disadvantage. There is not here present as at Walbrook a distinct transportation point unserved by a satisfactory through route for Alden coal. The existing route to Baltimore proper is generally satisfactory. The complainant therefore must meet the question, May a shipper by locating its yard on another line of railroad but at the same transportation point compel the establishment of a new through route? It seems to us that Congress had no such end in view when it empowered the Commission to form through routes. To so hold would be to construe the act as requiring all carriers to unite in through routes to and from all points, a construction we have already considered and rejected.

The industries, elevators, coal yards, private sidings, and similar terminal facilities located on the line of a railroad are in a sense the assets of that railroad. So far as the requirements of the law are concerned, it is entitled to the traffic going to or coming from these industries so long as it makes reasonable rates therefor and gives satisfactory service. The carrier must, however, hold itself impartial as between shippers and give to each one equal terminal facilities and service. And here develops a troublesome point in this case. The Pennsylvania road gives a service at its coal terminals which renders it impracticable for a shipper not on its line to deal in Alden coal. As before said, the Pennsylvania road has coal terminals, consisting of chutes and bins, which it rents to the coal dealers of Baltimore at an annual rental. These terminals are immediately adjoining its main tracks, and coal is switched to them and there delivered on the through rate, no extra charge being made for this delivery. The result of this very advantageous service is that no coal dealer can engage profitably in the selling of Alden coal, or of any other coal so delivered, without the benefit of such service. A dealer is compelled to have a yard on the Pennsylvania tracks or be practically shut out

of the trade, for it would be impossible for a shipper to accept team track delivery and by a wagon haul to its yards compete in price with those who have the cheaper rail delivery.

It appears in this case that the complainant, after vainly endeavoring for some time to secure an adequate yard on the Pennsylvania line, felt itself compelled to begin this proceeding so as to secure the coal which it desired and for which it had in previous years built up a considerable trade, one of its yards at one time having been located on the Pennsylvania line. This is a character of discrimination which the law does not countenance and which the Pennsylvania must end. In the record appears the unqualified statement by the operating official of the Pennsylvania lines in Baltimore that provision would be made for complainant at its terminals.

It will be ordered that the defendant carriers form a through route via Hanover and establish a reasonable rate thereover for the carriage of Alden coal from the colliery to the station at Walbrook, said rate not to exceed \$2.20 per gross ton. The division of the rate will be left for the present to the defendants.

No. 1718.
WINFIELD F. COZART
v.
SOUTHERN RAILWAY COMPANY.

Submitted April 24, 1909. Decided May 10, 1909.

In *Edwards v. N., C. & St. L. Ry. et al.*, 12 I. C. C. Rep., 247, the principle was enunciated that common carriers may not, in the accommodations which they furnish to each, unjustly discriminate between white and colored passengers paying the same fare. On the authority of that decision and the cases there cited, the principle is here reaffirmed. But the question is whether or not from the facts herein defendant has unduly and unjustly discriminated against the complainant and others of his race. Complaint dismissed.

Isaac H. Nutter for complainant.

Ed. Baxter, Claudian B. Northrop, R. Walton Moore, and F. W. Gwathmey, for defendant.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

Complainant is a newspaper correspondent, residing at Atlantic City, N. J., and defendant, a common carrier amenable to the provisions of the act to regulate commerce, operates a line of railway between Atlanta, Ga., and Washington, D. C. Complainant belongs to the negro race, and on March 18, 1908, he and his wife were passengers on defendant's train No. 36 leaving Atlanta, Ga., at 12.15 a. m., from which point they had first class passenger tickets to Washington, D. C., at which point train was scheduled to arrive at 10.30 p. m. In consideration of such first class fare petition alleges it was the duty of defendant to have furnished complainant and his wife the same class of accommodations as were furnished every other first class passenger. It is charged by complainant that defendant refused to furnish such similar accommodations in that it did not furnish seats "except in the smoking car where smoking was indulged in freely;" separate toilets for men and women in the

car or elsewhere, thereby causing complainant and his wife great embarrassment and humiliation; decent washbowls, and, generally, that all accommodations furnished complainant were inferior to those furnished white passengers for similar compensation. It is prayed that the defendant be required to cease and desist from said violations of the law.

Defendant, answering, denies that complainant or any other negro passengers were furnished any other or different accommodations than those furnished other first class passengers.

At the hearing complainant testified in his own behalf. In addition to the fact of having purchased first class tickets from Atlanta to Washington he stated that there was but one toilet in the car which he and his wife occupied, whereas there were two, marked "men" and "women," in the coaches used and occupied by white passengers; that smoking was permitted in the car occupied by him, and not permitted in those occupied by white passengers; that the car in which he rode was partitioned, the portion to be used by negroes being marked "Colored," hereinafter referred to as compartment A, and the other portion "White," hereinafter referred to as compartment B; that he complained to the conductor of smoking in the car, and asked if there was any other car in which he and his wife could ride; that the conductor asked what was the matter with the car, and after complainant said there was smoking, he made some remark not understood by complainant, but took no steps to remedy the condition; that his wife was compelled to use the same toilet as men, there being no other in the train to which she had access; that the toilet was wet and "messy;" that while there was a wash basin in the toilet, there was no water, the pump being broken and seemingly out of repair for some time; that there was no soap or towels, and he was unable to wash his face or hands on the journey. When the train left Atlanta the seats in compartment A were well occupied, but when the car reached Washington there were only a few persons in it. This trip was the only one made by complainant over the line of the defendant.

Further than this no testimony was submitted by complainant except letters of June 15 and July 27, 1908, from Vice-President and General Manager Ackert of the defendant to the Secretary of the Commission.

Car No. 1200, in which complainant rode, is a compartment car, there being a solid partition across near the center. It was built in 1895 by the Pullman Company, is vestibuled and standard in every respect, having steam heat, Pintsch light, provision for water, toilets, smoking room, and the construction is similar to that of other cars of the same class. The only difference between it and others of its class used by white passengers is the partition. The

company operates in through service 33 similar cars, and has in all 257 compartment cars. It operates 50 cars for use of white passengers, which are equipped with but one toilet. In compartment B there are 14 seats, toilet, heater, and locker; in compartment A there are 9 full seats, a half seat, and a long seat or sofa against the back of the smoking room, and it seats approximately 35 passengers. The smoking room has two long seats or sofas, seats 7 persons, and is cut off or separated from the remainder of the compartment; there is a toilet with basin on the same side as the smoking room and a water cooler in the opposite corner, which is filled and replenished with the same care and at the same time as are water coolers in cars exclusively for the use of white passengers. The practice, under order of the company, is to require the negro passengers to occupy the compartment at the forward end of car, and to carry compartment A forward, so that neither race is compelled to go through a compartment occupied by the other. In some instances, however, the car is turned when delivered to the defendant at Atlanta by its connection, the Atlanta & West Point—that is, compartment A, containing smoking room, is in the rear, in which event the company requires the conductor to give notification by telegraph. In such a contingency, in view of the fact that compartment B does not contain a smoking room, it is the practice not to permit smoking to be done there, and, therefore, the negro passengers would have no separate room for smoking.

Some question was raised as to the use of compartment occupied by negroes as a storage place for newspapers sold by boys on trains, and by train employees; for instance, by the conductor in doing clerical work, etc., but it appears that recently an order has been issued under which conductors are not permitted to do their work in the negro compartment, and it is shown, that in the event the space in it is fully occupied, the newsboy must move his wares to some other car.

It is also shown that if soap and towels are furnished at all there is no discrimination as between white and negro passengers.

It appears that on the entire system the proportion of colored travel to white is less than one-fourth, while the former has over 31 per cent of the seating capacity of coaches in trains. It also appears that the colored travel is principally local and that from Atlanta to Washington is not heavy, the number ranging from none to 8 per train, with an average of 6. No complaints have been received by defendant that the space set apart for colored travel is not sufficient, but it is in testimony that if the travel were sufficient a full coach would be provided. Some coaches have no wash basins, some one, and others two. The wash basin in car No. 1200 is constructed of nicoline, the same

material as is used for the same purpose in Pullman cars. It appears that the pump on this car was repaired on March 19, 1908. The car was reported in good order at Atlanta, Ga. Car 1200 was put in thorough repair at Knoxville in October, 1907, and at Manchester in August, 1908. The practice is to clean the cars at Atlanta and, if necessary, they are cleaned in transit by the porter.

It is in testimony that the defendant in the last ten years has added 132 coaches to its passenger equipment in addition to 33 combined passenger and baggage cars.

The conductors who ran this train from Atlanta to Charlotte and from that point to Washington testified generally to the rules and regulations of the defendant and corroborated statements previously made as to the construction of the car and the equality of treatment accorded. Neither conductor had any recollection of conversation with complainant. They stated their general practice to be in the event that smoking was indulged in in any portion of the train in which it was not permitted to immediately take measures to stop it. It was also stated that, generally speaking, probably on account of the fewer number of people using them, the colored toilets were cleaner than those used by white passengers. None of the witnesses who were in a position to know had any recollection whatsoever of the actual conditions on the trip complained of. The trip was made six months before complaint was filed and nearly a year before the hearing was had, and owing to the fact of there having been a misapprehension as to the date on which complainant started from Atlanta the conductors who were on the train in which he was riding were only apprised of the fact that they were expected to testify within a very short time before they actually did. The general trend of the testimony was to the effect that an honest and earnest effort had been and was being made by defendant to avoid discrimination between any and all of its passengers.

Briefly stated, therefore, we have the uncontradicted testimony of complainant as to the actual condition which existed on the trip and the uncontroverted evidence of the defendant that if such conditions were present they were violative of the general rules and practices. In other words, it is contended that possibly the car was turned and that therefore complainant and others of his race did not have a separate smoking room on this trip; that while it was the practice to furnish soap and towels, they may not have been furnished, but if they were not furnished negroes neither were they furnished whites, and that an allegation of unjust discrimination is not made out where an emergency condition was unavoidably violative of general nondiscriminatory practices and rules.

In his brief, complainant prays the issuance of an order commanding defendant to cease and desist from failing to furnish a wash-bowl, soap, and towels, two toilets designated "Men" and "Women," and a separate smoking compartment to colored passengers where the same accommodations are furnished white passengers.

In *Gaines v. Seaboard Air Line Ry. et al.*, 16 I. C. C. Rep. 471, to which reference was made in this case, W. D. Duke, assistant to the president, Richmond, Fredericksburg & Potomac Railroad, testified that on cars operated between Richmond and Washington on which a high class of passengers is carried the closets are not marked, to which no complaint or objection, either by men or women, had ever been made, nor did he know of any objections thereto. In fact, it was his view that the absence of label or designation was less objectionable. It is also stated that those who object to tobacco smoke are not, when closets are unmarked, compelled to go through the smoking room to reach the closet at the same end as the smoking room, but can use the other. It is in testimony that on some branch lines of the defendant the same practice is followed.

Even in compartment cars the white passengers occupying the portion assigned to them have but one closet.

In *Edwards v. N. C. & St. L. Ry. et al.*, 12 I. C. C. Rep., 247, the principle was enunciated that common carriers may not, in the accommodations which they furnish to each, unjustly discriminate between white and colored passengers paying the same fare. On the authority of that decision and the cases there cited, the principle is here reaffirmed. But the question is whether or not from the facts herein defendant has unduly and unjustly discriminated against the complainant and others of his race. Taking the accommodations in the order in which complainant sets them forth in his brief, we have seen that compartment A contained a wash basin or bowl, a duplicate of that in cars assigned to white passengers; that ordinarily soap and towels are furnished to all passengers on the Atlanta-Washington train, that if they, on account of an emergency, are not furnished, all suffer alike; that but one toilet is furnished which does not bear designation and that unless the car is turned a separate smoking compartment is furnished. Therefore, in order to make out a case of unjust discrimination it must be shown that separate toilets are furnished white men and women and that the instances in which the car is turned are so frequent as to constitute a substantial deviation from defendant's usual practice—which is nondiscriminatory. We are of the opinion that as to the turning of the car the rules of the defendant are such as to remove that phase of the case from the realm of unjust discrimination. But care should be exercised to reduce these instances to a minimum. Except in case of accident it is

possible to have this car with the proper end forward. It is hardly within the power of this Commission to order that defendant must, at its peril, refrain from causing emergency conditions or that in the event of such a condition does obtain, a train must be delayed until the car can be turned. It is platitudinous to say that accidents occur where all passengers are deprived of the accommodations usually accorded them, but that fact could not be the foundation for a finding of unjust discrimination.

The question of separate toilets was considered by the Commission in the *Edwards case, supra*, and no order thereon was made. It is apparent the same condition exists here. Defendant has a number of coaches equipped with but one toilet, which are used by white passengers; and we think that the absence of distinguishing designation is not unjust discrimination.

It follows that the complaint must be dismissed.

16 I. C. C. Rep.

No. 1828.
DOUGLAS & COMPANY
v.
CHICAGO, ROCK ISLAND & PACIFIC RAILWAY
COMPANY ET AL.

Submitted April 1, 1909. Decided May 10, 1909.

1. Complaint arises from the withdrawal by defendants of certain transit privileges and rates which were in effect at the point where complainant's works are located for several years prior to the establishment of said works, and which are continued as to other manufacturers of grain products at that point.
2. There is much to be said in favor of milling and manufacturing in transit, and there is much that can be said about the irregular and discriminatory practices that are invited and possible thereunder.
3. There is of course a limit to the products which can reasonably be included in the list of those which will be transported at the raw material rate either with or without a transit privilege. It might be reasonable to withhold transit privilege from a product that is essentially different from the raw material and from the other products of the same raw material which are accorded transit rates, as, for example, a liquid product of grain; but it is clearly discriminatory to single out one or more of several milled products of grain and withhold from it or them transit privilege which is accorded at that or some other competitive point to other milled products of grain of substantially similar character, value, and packing, and which are transported under substantially the same conditions, attended by substantially equal risks, where there is competition between the millers of the grain either in marketing their product or in securing their material for milling.
4. Defendants argue that the Commission is without power to direct a carrier to grant a transit privilege. There can, however, be no question as to the right and power of the Commission to order the removal of an unjust discrimination and to prescribe such reasonable rates and regulations as will effect such removal. The Commission desires to leave defendants reasonable opportunity to remove the unjust discrimination herein found in such manner as will best effect that purpose. Defendants may therefore submit for approval a plan for removing the unjust discrimination against complainant, and if that is not done the Commission will consider entering such an order as will accomplish that object.

C. A. Clark for complainant.

E. B. Peirce for Chicago, Rock Island & Pacific Railway Company.

Blewett Lee for Illinois Central Railroad Company.

Hale Holden for Chicago, Burlington & Quincy Railroad Company.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

Complainant is a corporation engaged at Cedar Rapids, Iowa, in the manufacture of starch from corn. It began this manufacture in 1903 and now has \$500,000 invested in its plant and \$150,000 working capital.

For many years a large and important cereal mill has been located at Cedar Rapids, and for many years the carriers whose lines reach that place, including defendants, have granted milling-in-transit privileges there on grain, under which milled products of such grain have been forwarded at the remainder of the grain rate from point of origin of the grain to destination of the product.

Before establishing its plant complainant consulted with representatives of defendants and other railroads and was assured that it would be granted as liberal transit privileges as were granted to other manufacturers of grain products at Cedar Rapids. Such transit privileges were granted until early in 1908, when they were in part withdrawn or were changed to some other basis, which resulted in increases of from 25 per cent to nearly 100 per cent in the rates so affected. Complainant's owners and officers had previously been connected with the cereal mill at Cedar Rapids, were thoroughly familiar with the milling-in-transit privileges which it enjoyed, and they established their starch plant at Cedar Rapids on the strength of those transit privileges and the assurance and expectation that they would be continued. When complainant's plant began operations in June, 1903, no new transit privileges were established for or accorded to it. The transit privileges which had long existed were applied to it.

Complainant grinds, in round figures, 1,500,000 bushels of corn per year, or about 5,000 bushels per day. The cereal plant at Cedar Rapids, before mentioned, owned by the Quaker Oats Company, also grinds about 5,000 bushels of corn per day for mixing with its by-products in the manufacture of feed. The corn so ground by the Quaker Oats Company is purchased at points in the grain fields or at grain markets in competition with the purchases of complainant for its starch plant. Prior to the withdrawal of the transit privileges both the Quaker Oats Company and complainant had equal rates on corn and its products from the same point to the same destination. Since the withdrawal of complainant's transit privileges the Quaker

Oats Company has transit privileges on grain, including corn so purchased, and is permitted to forward all of its products, including feed, at the remainder of the grain rates. Complainant is permitted to forward feed, a by-product of its mill, on the remainder of the grain rates, but, excepting to certain destinations, is no longer permitted to forward its manufactured product, starch, under those rates.

In 1904, about one year after complainant began operations, representatives of the Illinois Central Railroad solicited a share of complainant's business, and in order to secure same tendered and arranged transit privileges which were acceptable to complainant and which were apparently satisfactory to that defendant until, without previous announcement or consultation with complainant, it withdrew those privileges and established entirely new rates and regulations, which resulted in an increase of more than 75 per cent in complainant's rates.

The geographical location of defendants' lines and the different methods which have been adopted for effecting the changes complained of make it necessary to consider them separately.

Cedar Rapids is situated at about the center of the eastern half of the state of Iowa. Defendant, Chicago, Rock Island & Pacific Railway, has lines from Cedar Rapids to St. Paul and Minneapolis, to points in northwestern Iowa, southern Minnesota, and eastern South Dakota, to the Mississippi River at Clinton, Davenport, Muscatine, Burlington, and Keokuk. Its main line through Cedar Rapids connects with its Chicago-Omaha main line at West Liberty, about 36 miles southeast of Cedar Rapids, connects with its Chicago-Kansas City main line at Columbus Junction, about 57 miles southeast of Cedar Rapids, and connects at Burlington, 98 miles southeast of Cedar Rapids, with line of defendant, Chicago, Burlington & Quincy Railroad, for St. Louis. The Rock Island also has a line from points in northwestern Iowa and in Minnesota through Des Moines to Keokuk, where connection is made with the same St. Louis line of the Chicago, Burlington & Quincy Railroad.

Originally the Rock Island granted complainant milling-in-transit rates on corn, with starch as the outbound product, at the through grain rates to Chicago, to the Mississippi River, to St. Louis and East St. Louis, to St. Paul and Minneapolis, to Omaha, Kansas City, Atchison, Leavenworth, and St. Joseph. To certain points beyond the Missouri River shipments were subject to the rates on the milled product from points of origin of the grain to destination of the product.

Generally speaking, these transit rates applied in the direction of the movement from the point of purchase of the grain to the destination of the product. That is, grain purchased in Kansas City could

be milled at Cedar Rapids and the product be forwarded to St. Paul on the transit rates. If grain was purchased in northern Iowa, it could be milled at Cedar Rapids and the product be forwarded to St. Louis or Memphis at the grain rates. If grain was purchased west of Cedar Rapids, it could be milled there and be forwarded to the Mississippi River or points east thereof on the grain rates. If grain was purchased east of Cedar Rapids, it could be milled at Cedar Rapids and the product be forwarded to points west of Cedar Rapids at the grain rates.

Early in 1908 the Rock Island eliminated starch from the list of grain products which might be forwarded under the grain rates and transit privileges when destined to points north, west, or south of Cedar Rapids, retaining milling-in-transit privileges on starch at the grain rate to Memphis, Tenn. The transit privileges and rates eastbound to points on the Rock Island lines to and including Chicago were not withdrawn. No transit privileges to any points were withdrawn which affected the interests or business of any other millers, manufacturers, or maltsters of grain and grain products at Cedar Rapids. The announcement of the withdrawal of transit privileges on starch provided that the transit privileges carried in the tariff would not apply on outbound products consisting of glucose, glucose syrup, corn syrup, starch, or any other grain product not specifically provided for in the list of grain products which would be forwarded under the grain rates. Complainant does not manufacture any of those products, excepting starch. It contends for transit rates only on starch, gluten feed, and corn-oil cake.

The situation is somewhat complicated by the fact that Rock Island tariff, I. C. C. No. C-6530, which is referred to as containing the list of products which will take grain rates, includes in that list "all uncooked manufactured products of corn." Complainant alleges and proves that starch is an uncooked product, and therefore contends that there is irreconcilable conflict in defendants' tariffs. "Corn flour" is also included in the list of products taking corn rates, but it appears that there is a difference between corn flour and starch.

Complainant argues that the transit privileges which were withdrawn were voluntarily granted by the carriers; were in effect for years, both for complainant and others, and are still in effect as to others; that the necessary presumption is that they were remunerative, and that such advances as have been effected by withdrawal of these privileges can not be defended as either reasonable or fair. It argues that the milling-in-transit principle is the outgrowth of many years of experience in the transportation of grain and its manufactured products, and that in no other way can the manufacturer whose

raw material is grain be protected against the changes in grain rates to primary markets and export ports, against which he must compete in the purchase of his grain. It argues that the commodity rates which it is now asked to use from Cedar Rapids to St. Louis, St. Paul, and the Missouri River were fixed at a time when they were also the grain rates, but that it is unjust and unfair to now apply them to transportation of the grain products, because under competition the grain rates have been materially reduced, while these commodity rates on the grain products have remained at the former figures.

Complainant also represents that the grain rates to St. Louis, St. Paul, and the Missouri River, with the exception of proportional rates from the Missouri River to St. Paul, have not been reduced in the same ratio as have the rates to Chicago, and that, therefore, if the milling-in-transit rates to Chicago, which are left in effect, are remunerative, the presumption must be that the higher rates to St. Louis, St. Paul, and the Missouri River, which were withdrawn, must have been remunerative.

Defendant, Chicago, Rock Island & Pacific Railway, offers no reason for the withdrawal of these transit rates and privileges. No allegation is made that the rates withdrawn were unremunerative. This defendant argues that the Commission is without power to order the granting of a milling-in-transit privilege; that if it finds unjust discrimination to exist in these premises it may not go further than to order the defendants to cease and desist from such discrimination, leaving defendants to devise the means and determine the method to be adopted in the removal of such discrimination. It argues that the only discrimination pointed out is as to the Quaker Oats Company, engaged in the manufacture of food products and the by-products of such manufacture. It is not alleged by complainant that it comes in direct competition with the Quaker Oats Company in the sale of manufactured products except as to feed; on that both are on an equality as to transit rates. But complainant alleges that of necessity it must compete with the Quaker Oats Company and with others in the purchase of corn at the different points and in the different markets from which it is shipped to Cedar Rapids for milling, and that where others are accorded grain rates on the manufactured product and it is required to pay higher commodity rates it is unjustly discriminated against in that the territory in which it can purchase corn on the lines of defendants is thereby restricted.

Defendant Chicago, Rock Island & Pacific Railway argues that inasmuch as complainant's product, starch, is not in direct competition with the flour and the food products of other millers of grain -

at Cedar Rapids, no unjust discrimination exists, as there can not be prejudice within the meaning of the law unless there is a competitive relation between the commodities when offered for sale in the market. Does the law distinguish between competition of manufactured articles offered for sale in the market and competition between the products from which such articles are manufactured? Or does the law distinguish between competition between places of sale and competition between places of manufacture? Or between competition between places of consumption and competition between places of production?

This defendant also points out that there are no starch mills west of Cedar Rapids on its line, and that complainant meets no competition in the manufacture of starch at any point on the Rock Island lines. The principal competitor of complainant is the Corn Products Company, which has plants at Pekin and Waukegan, Ill.; Indianapolis, Ind.; Oswego, N. Y.; and New York City. It also has a plant, not now in operation, at Peoria, Ill. It is proper, however, to note that Peoria and Pekin are but a few miles apart, and that, in general, they are as one for rate-making purposes. There is a starch plant at Keokuk, Iowa, to which reference will again be made. Complainant's witness admits that existing rates result in no discrimination against it on part of the Rock Island lines in so far as the starch manufactured at Pekin, Ill., is concerned. The Rock Island contends that with regard to transit privileges, all starch manufacturers are treated alike by it. It alleges that transit privileges with respect to flour and other grain products are forced by competition and can not, therefore, be withdrawn; that like reason for maintaining the privilege on starch did not exist, and that, regardless of any conversations or understandings had with reference to transit privileges and their withdrawal, it was entirely consistent to withdraw these privileges from complainant.

This defendant calls attention to the fact that complainant's original investment in plant was \$250,000, and that within four years it had increased to \$500,000. It suggests that the business of complainant has been wonderfully prosperous, and points out that this is significant in connection with complainant's objection to having its transportation charges increased from 30 per cent to 100 per cent. This defendant argues that, admitting that complainant established its plant in expectation of continuance of the transit privileges, the carrier is not therefore estopped from changing the rates. This Commission has frequently held that where a plant has been established and money has been invested on the faith of certain transportation rates and conditions upon which the life of the plant depends the carrier may not increase those rates and charges to the serious

disadvantage of such investment *without good cause or reason*. The reason assigned by the Rock Island for withdrawing these privileges in this instance is stated by it as follows:

The transit privilege on starch at Cedar Rapids was withdrawn by this defendant because there was not the slightest reason for its continuance. In withdrawing the privilege the circumstances were carefully investigated in utmost good faith by defendants' officials and it was found that no undue prejudice would result from the change and that complainant's business would not suffer any material diminution.

It argues that "it follows that defendants' act in withdrawing the privilege was not unlawful and that the complainant's grievance is purely imaginary." Complainant insists that its grievance is not "purely imaginary," and shows that from August 1, 1907, to August 1, 1908, 21 per cent of its total business would have been affected by these changes and that the changes effect increases in its rates substantially as follows:

To St. Louis, 50 per cent; to St. Paul from Kansas City, 100 per cent; to St. Paul from local Iowa and Missouri stations, 33½ per cent; to Kansas City, 25 per cent to 40 per cent.

This defendant urges that no complaint is made that the rates are *per se* exorbitant, to which complainant answers that defendants have advanced no claim that the rates were unreasonably low or unremunerative prior to the advance. Defendant calls attention to the fact that at one time in the past an extra charge of 2 cents per 100 pounds was made for the privilege of milling grain in transit at Cedar Rapids, and that the granting of milling-in-transit privileges involves considerable expense to the carrier, which does not apply to shipments which move directly through the milling point. There may be good reasons for an additional charge for a milling-in-transit privilege, but if such charge is made at a given point for the privilege of milling grain for a certain purpose, should it not apply to all milling of grain at that point?

This defendant argues that starch is a more valuable commodity than the ordinary products of grain, and should therefore take a higher rate than that applied to the raw material. Complainant shows that the value of starch is less than that of rolled oats, rolled wheat, malt flour, or graham flour, all of which have transit rates from Cedar Rapids; that the weight of starch per cubic foot, as packed for shipment, is greater than of flour, malt, rolled oats, or steel-cut oats; that the value per cubic foot is less than that of the other grain products named; that the degree of risk attending the transportation is nominal. It appears that starch is conveniently and securely packed, well protected from damage, and is from every transportation standpoint a desirable traffic. The Rock Island argues that as starch is not in competition with other products of corn upon

which transit is allowed at Cedar Rapids, the starch rates are not at all related to the rates on such other articles, and that no relation can properly be held to exist between different rates on various articles which may contain ingredients from the same raw material, produced in the same locality, if the products do not compete with each other.

Prior to the withdrawal of the transit privileges, defendant Chicago, Rock Island & Pacific Railway jointly with defendant Chicago, Burlington & Quincy Railroad granted transit privileges at Cedar Rapids on shipments to St. Louis, which shipments moved to Burlington via the Rock Island and from there to St. Louis through Keokuk via the Burlington lines. That transit privilege has been withdrawn. There is a starch mill at Keokuk, and the Chicago, Burlington & Quincy Railroad still accords it a transit privilege under which its starch is forwarded to St. Louis on the remainder of the grain rate. The Rock Island contends that this privilege is not accorded by it nor to a mill on its lines. The Rock Island is not a party to a joint tariff with the Chicago, Burlington & Quincy under which corn delivered to the Chicago, Burlington & Quincy at Burlington or Keokuk is accorded a transit privilege at Keokuk and the forwarding of the starch on the grain rate.

The main line of the defendant Illinois Central Railroad from Chicago to Omaha crosses the Mississippi River at Dubuque and passes about 40 miles north of Cedar Rapids. It has a spur branch from Manchester to Cedar Rapids, 42 miles. Shipments from Manchester, or points on its lines west thereof, or from points between Manchester and Cedar Rapids to points on or east of the Mississippi River, which are milled at Cedar Rapids, must be hauled over the branch to Cedar Rapids and back over the same rails to the main line. As before stated, this defendant solicited complainant's business, offered and established transit privileges in order to secure same, and maintained such arrangements until they were withdrawn and arrangements hereinafter described were substituted therefor at about the same time that the transit privileges were withdrawn by the Rock Island. There is no claim that the Illinois Central contributed to any inducement to the complainant to locate its plant at Cedar Rapids.

This defendant withdrew its transit privileges under which the starch was forwarded at the remainder of the grain rate and established rates on starch from various points in the grain fields and at which no starch is manufactured, and established new transit privileges at Cedar Rapids under which, if corn is shipped to Cedar Rapids and manufactured into starch and the starch is forwarded over its lines, the starch rate from point of origin of the grain to destination of the product applies. This had the effect of increasing the rates to complainant from 40 per cent to 96 per cent.

The first transit privilege of this defendant provided for an extra charge of 2 cents per 100 pounds, which was abandoned in 1902. Its transit privileges were gradually extended and made more liberal, although, with regard to certain items, an additional charge of 2 cents per 100 pounds was established. This defendant also has in its official list of the products which will take corn rates "all uncooked grain or cereal products manufactured from corn," and this defendant also refuses to recognize starch as an uncooked product of corn.

The particular points of complaint against the Illinois Central are that (a) the change in transit privileges and rates prevents complainant from purchasing corn on the Illinois Central lines; and (b) that the Illinois Central transports corn from Iowa points to Peoria and starch from Peoria to Cairo for the southeast at materially less rates than complainant can avail itself of under any Illinois Central tariff. For instance, complainant shows that this defendant transports corn from Iowa Falls, Iowa, to Peoria, Ill., on a rate of 12.2 cents (increased to 12.5 cents on April 28, 1908), and transports starch from Peoria, Ill., to Cairo, Ill., for 6 cents (increased to 8 cents on March 15, 1909), a total rate from Iowa Falls to Cairo of 18.2 cents (now 20.5 cents). Its rate on starch from Iowa Falls to Cairo under which complainant can ship corn from Iowa Falls to Cedar Rapids and starch from Cedar Rapids to Cairo is 24 cents. This example is fairly illustrative of the situation. Defendant explains this on the ground that Peoria is a basing point, at which the rates break; that the starch rate from Peoria to Cairo is a highly competitive rate, which it must make or stay out of that business. It argues that its line via Cedar Rapids involves an out-of-line and back haul, and that its line to Peoria is roundabout. It is true, as before noted, that this defendant reaches Cedar Rapids only by a spur branch from Manchester to Cedar Rapids, a distance of 42 miles. It is also true that the haul over its own rails from points in Iowa to Peoria, Ill., is like going around from the shank to the point of a fishhook. But, taking Iowa Falls as a representative point of origin, it is seen that in hauling a car of corn to Peoria and a car of starch from Peoria to Cairo the Illinois Central performs a total haul of approximately 743 miles, and that it can haul a car of corn from the same point of origin to Cedar Rapids and a car of starch from Cedar Rapids to Cairo, all over its own lines, with a total haul of approximately 684 miles. The fact that rates break at Peoria can not stand as a bar to comparison between the through charges over this defendant's lines.

This defendant argues that complainant can ship to Peoria via the Rock Island or other lines on transit rates and from there avail itself of the 6-cent rate to Cairo. To this the complainant replies:

"That shuts us out from all opportunity to purchase corn on the Illinois Central lines." It is a fact that so long as the present east-bound transit arrangements are continued via the Rock Island and other lines that will be later referred to, complainant could purchase corn at Omaha or at points in western Iowa reached via the lines of such carriers and forward the starch to Peoria under the grain rate.

Complainant points out that defendant, Illinois Central, is a party to Chicago, Milwaukee & St. Paul tariff, I. C. C. No. B-1435, which names rates from Minneapolis and other Minnesota and western points to St. Louis, East St. Louis, Quincy, and Alton on grain and grain products, and includes starch in the list of grain products which take the grain rates, and that the Illinois Central is also party to Western Trunk Line tariff, I. C. C. No. A-23, which carries a basis on starch in carloads of 9 cents less than fifth class to several hundred stations in Arkansas, Colorado, Kansas, Mississippi, and Oklahoma, and argues that the same basis applied from Cedar Rapids to St. Louis and Chicago would make the starch rate 10 cents, and inquires why, if this is a correct basis to Joplin and Springfield, Mo., from Cedar Rapids, it is not also a correct basis to apply to St. Louis. The Illinois Central's rate on starch from Cedar Rapids to Chicago or St. Louis was, at the time this case was heard, 15 cents. On March 15, 1909, the rate to Chicago was made 16 cents and to St. Louis 12.5 cents.

Attention is also called to the fact that the Illinois Central and other roads serving Cedar Rapids are parties to Western Trunk Line tariff, I. C. C. No. A-29, which carries rate on starch and other grain products from Minneapolis to New York of 25 cents, and under which wheat and other grains except corn may be milled in transit at Cedar Rapids. Corn is excepted from this milling privilege, although starch is specifically named in the list of products taking the corn rate from Minneapolis. At the time of hearing this case the rate on starch from Cedar Rapids to East Dubuque was 11 cents, and from East Dubuque to New York 20 cents, a total of 31 cents, as compared with the Minneapolis-New York rate of 25 cents.

This defendant also lays particular stress upon the fact that complainant's business has been prosperous, and says that the case is not at all as it would be if it involved a business that had been built up upon certain rates and which was about to be destroyed or crippled if the rates were raised, which argument suggests the idea of fixing transportation charges according to the prosperity or profits of the shipper.

It appears that since this proceeding was begun the Illinois Central has reduced the rates which it first established, but under the

revised rates complainant still alleges discrimination, and that it is shut out from buying corn on even terms with others in the territory served by the Illinois Central. This defendant suggests that the act to regulate commerce "never undertook to protect anybody but shippers and it does not confer a right to purchase anywhere." It is difficult to distinguish between "shippers" and those who purchase corn and hire a carrier to transport it. Defendant argues that complainant can purchase corn in Omaha and Kansas City, which are primary markets, and that if it can in fact buy elsewhere grain at reasonable prices it has no right under the law to require this defendant to put in transit privileges on starch or to transport starch on the basis of the corn rate simply in order that it may buy corn on the defendant's lines. Complainant is unable to get from local points in the corn fields sufficient corn for its needs and is obliged to purchase large quantities in Omaha, Kansas City, and even in Chicago. It shows that since it began operations it has purchased more than 1,500,000 bushels of corn in those markets, of which approximately 800,000 bushels were purchased at Omaha, 500,000 at Kansas City, and 200,000 at Chicago. Under the present arrangements complainant would get no transit privileges on the corn purchased at Chicago or at Kansas City.

This defendant especially argues that starch is not a food product and therefore not in competition with the other grain products which are manufactured at Cedar Rapids and shipped on grain rates. It points out that complainant gets the same rate on corn manufactured into feed as is given to the Quaker Oats Company; that if the Quaker Oats Company manufactured starch it would pay exactly the same rates that complainant pays; that the Quaker Oats Company is not given any improperly low rate on an article which it alone manufactures, and that therefore there is no unjust discrimination. It argues that a transit rate based upon the rate on the manufactured product from point of origin of the raw material to final destination of the product is a more reasonable and logical transportation proposition than a transit rate which permits the milled product to go forward under the raw-material rate. It might not be difficult to accept that theory if it were applied as a general or universal practice. It is difficult to determine that one theory is reasonable and right for one manufacturer or shipper and another theory is reasonable and right for another manufacturer or shipper under substantially similar circumstances and conditions. The Illinois Central argues that it is more reasonable to look at the classification and say that the class rate shows what the transit rate on starch should be, than to look at the rate on grain and say that the grain rate shows what the transit rate on starch should be. That presumes a stable and maintained

rate on starch regardless of changes in rates on grain—a theory that is at variance with the long and firmly established practices of the carriers in this territory under which, generally speaking, grain products are transported at grain rates, and where this is not so, certain close relationships are observed as between rates on grain and the rates on its products. The argument that inasmuch as starch is classified in the classification under class rates, while grain is transported under commodity rates, the starch should take a higher rate than the grain is of no force. Practically all commodities which are transported under commodity rates are also listed in the classification. It is argued that starch, being a more valuable commodity than corn, should pay higher freight charges. If this is a sound argument as to starch and corn, it is equally sound as to oatmeal and oats, flour and wheat, etc.

In the argument counsel for the Illinois Central was asked to designate instances in which his company had established the principle of charging for the entire movement, in connection with milling in transit, the product rate from point of origin of the grain to destination of the product. He was unable to refer to other instances, but since that time we have found in the files Illinois Central Tariff, I. C. C. No. A-7326, which authorizes the stoppage of grain at intermediate points in the direct line of transportation for cleaning, clipping, mixing, milling, malting, etc., and which provides that if the grain itself is reshipped, the grain rate from point of origin to destination will apply; but that if the milled or malted product of the grain is reshipped, the rate on such product from point of origin of the grain to destination of the product will apply. If rates on the products of grain have been established generally from the points of origin of the grain, this tariff seems to give the principle announced by the Illinois Central some practical application; but unless such grain-product rates are in fact established generally from points of origin of the grain, the provision is practically meaningless. This tariff contains provision for considering Cedar Rapids as in the "direct line" for certain shipments from points west of Manchester to points east thereof.

In addition to being served by the lines of defendants, the Chicago, Rock Island & Pacific and Illinois Central, Cedar Rapids is located upon the main line of the Chicago & Northwestern Railway from Chicago to Omaha, and upon the Kansas City line of the Chicago, Milwaukee & St. Paul Railway 6 miles from where that line joins the main line reaching from Omaha to Chicago. Under existing conditions complainant can buy corn in Omaha or Council Bluffs or at any point west of Cedar Rapids on the lines of the Chicago & Northwestern, mill it at Cedar Rapids, and forward the starch to the Mississippi

River and points on the Chicago & Northwestern east thereof at the grain rate.

The Chicago & Northwestern was not made a party defendant in this case, because, as stated by complainant, it had withdrawn no transit rates which were of value to complainant. The Chicago, Milwaukee & St. Paul withdrew its transit rates northbound, but was not made defendant, because, as stated by complainant, that line had agreed to accept and apply whatever conclusion is reached in the case.

Requested to state definitely what he thought the Rock Island should be required to do, complainant's principal witness stated that the transit to St. Louis via the Rock Island and Burlington lines should be restored so as to put them on an equality with the starch plant at Keokuk; that northbound transit rates should be reestablished from Kansas City and intermediate points; that westbound transit should be restored from Rock Island points to the Missouri River at the grain rate and to points west of the Missouri River at the product rate. He stated that the only thing they contended for at the hands of the Chicago, Burlington & Quincy was restoration, in conjunction with the Rock Island, of the transit to St. Louis via Burlington.

As has been seen it is proven that starch is an uncooked product of corn, and it is therefore obvious that it can not, except by specific exception, properly be excluded from a list which includes "all uncooked manufactured products of corn," nor from a list which includes "all uncooked grain or cereal products manufactured from corn."

There is much to be said in favor of milling and manufacturing in transit, and there is much that can be said about the irregular and discriminatory practices that are invited and possible thereunder.

There is, of course, a limit to the products which can reasonably be included in the list of those which will be transported at the raw-material rate, either with or without a transit privilege. It might be reasonable to withhold transit privilege from a product that is essentially different from the raw material and from the other products of the same raw material which are accorded transit rates, as, for example, a liquid product of grain; but it is clearly discriminatory to single out one or more of several milled products of grain and withhold from it or them transit privilege which is granted at that or some other competitive point to other milled products of grain of substantially similar character, value, and packing, and which are transported under substantially the same conditions, attended by substantially equal risks, where there is competition between the millers of the grain either in marketing their product or in securing their material for milling.

The Rock Island argues that the Commission is without power to direct a carrier to grant a transit privilege. There can, however, be no question as to the right and power of the Commission to order the removal of an unjust discrimination and to prescribe such reasonable rates and regulations as will effect such removal.

For the reasons indicated, we are of the opinion that in the present adjustment of rates defendants, the Chicago, Rock Island & Pacific Railway and the Illinois Central Railroad, unduly and unjustly discriminate against this complainant. It does not appear that defendant Chicago, Burlington & Quincy Railroad would object to a restoration of former rates and arrangements. We desire to leave defendants reasonable opportunity to remove the unjust discrimination in such manner as will best effect that purpose. We desire to leave opportunity for conference between defendants and complainant if that be desired. We shall, therefore, issue no specific order at this time. The defendants may, on or before June 15, 1909, submit for approval a plan for removing the unjust discrimination against complainant, and if that is not done the Commission will consider entering such an order as will accomplish that object.

16 I. C. C. Rep.

No. 1985.

IN THE MATTER OF CONTRACTS OF EXPRESS COMPANIES
FOR FREE TRANSPORTATION OF THEIR MEN AND
MATERIAL OVER RAILROADS.

Submitted April 8, 1909. Decided May 11, 1909.

1. A railway company may lawfully transport the men and supplies of an express company without reference to any tariff provision when employed or used in the business of the express company upon the line of the railway itself, and in the same manner an express company may lawfully transport the packages of a railway company between points upon that line of railway without reference to its tariff rates.
2. A railway company may not lawfully transport men and supplies of an express company when employed or used in the business of that company at points not on the line of railway, and an express company may not lawfully transport for a railway packages between points on its route but not on that particular line of railway.

McDaniel, Alston & Black and *Stewart & Shearer* for Southern Express Company.

A. P. Thom for Southern Railway Company.

T. B. Harrison, jr.; C. W. Stockton; Cravath, Henderson & de Gersdorff; Carter, Ledyard & Milburn; O'Brien, Boardman, Platt & Littleton; J. L. Minnis; and *Alexander & Green* for American Express Company, Adams Express Company, Pacific Express Company, United States Express Company, and Wells Fargo & Company.

REPORT OF THE COMMISSION.

PROUTY, *Commissioner*:

This proceeding of inquiry was entered upon for the purpose of determining the lawfulness of certain provisions for the free transportation of men and materials contained in the contracts under which the defendant express companies operate over various lines of railway. The Adams Express Company, the Pacific Express Company, the American Express Company, the Southern Express Company, the United States Express Company, and the Wells Fargo & Company were made defendants and were required to furnish certain information as to the necessity for this free service and the

extent to which it was furnished. They have filed statements showing the importance to them of these contract provisions, have submitted briefs, and been heard in oral argument. The Southern Railway Company has also filed a brief and been heard orally.

The following is the course of business under the contracts with the various railway companies over which the defendants operate:

1. The railway furnishes and hauls the express cars containing the express matter, together with the messengers, guards, and whatever furniture it may be necessary to carry in those cars.

2. The express companies all employ what are known as "route" agents, whose duty it is to constantly travel from point to point upon the line of railroad, exercising supervision over messengers, agents, and the general conduct of the business. A considerable number of these route agents are employed, and they travel many thousand miles a year. The other officers of the express company, particularly the auditor and his representatives, have occasion to travel over the various lines of railroad in looking after the business transacted upon that line. These men are carried by the railroad, usually upon its passenger trains and in its passenger cars.

3. The express company uses in the conduct of its business wagons, horses, safes, desks, and other office furniture, etc. The railroad transports the materials and supplies required for use by the express company in its business, together with the necessary hay, grain, and other feed for its horses. This transportation is usually by freight.

4. The express company transports for the railroad company small and valuable packages which the railroad company can not conveniently handle itself. Upon many lines of railroad this seems to be the method employed for sending its station receipts to some central point and for other remittances of money.

The express company pays to the railroad company a certain per cent of the gross receipts received by it for the handling of express matter. It pays nothing aside from this for the transportation of its men and materials, as stated in paragraphs 2 and 3, and the express company receives nothing from the railroad company for the handling of the packages mentioned in paragraph 4 except in so far as the mutual undertakings of the contract supply a consideration.

It would appear that under these contracts the men and supplies mentioned in paragraphs 2 and 3 are sometimes transported free only when employed or used in the business of the express company upon that line of railroad, but that under other contracts they are handled free when intended for use at points off the line of railway. It would also seem that the express companies sometimes handle express matter for the railway only between points upon the line of railway itself,

while in other cases they handle such matter for the railway between points upon other lines of railroad over which they operate.

These contracts contain many other provisions, but none which are essential to an understanding and determination of the matter in issue. Two questions are presented:

(a) May the railway company lawfully transport the men and supplies of the express company without reference to any tariff provision, when employed or used in the business of the express company upon the line of railway itself, and in the same manner may the express company lawfully transport the packages of the railway company between points upon that line of railway, without reference to its tariff rates?

(b) May the railway company so transport men and supplies for the express company when employed and used in the business of that company at points not on the line of railway, and may the express company transport for the railway packages between points on its route but not on that particular line of railway?

In the *Express cases*, 117 U. S. 1, decided in 1885, the Supreme Court of the United States held that a railroad company might, by exclusive contract with an express company, confine the transaction of an express business upon its line to that particular company. This was apparently upon the theory that it was the duty of a railroad to furnish the public with facilities of this character and that so long as that duty was discharged the railroad might choose the express company through which it would operate.

A railroad might undoubtedly be required to perform many of the transportation duties which are ordinarily undertaken by express companies. It might, if it saw fit, voluntarily undertake as a part of its business an express service which would cover almost the entire ground occupied by most express companies. Our principal express companies do embrace in their operations some kinds of business which are not properly within the duties of a common carrier, like the issuing of money orders, but these are an insignificant part of their entire duties and this Commission has said with respect to the money order that in issuing it the express company performs a service of value and convenience to the public, with which it will not interfere unless constrained by the imperative mandate of the act to regulate commerce. *American Bankers' Asso. v. American Express Co. et al.*, 15 I. C. C. Rep., 15. It must be remembered, therefore, that in and by the execution of these contracts the express company and the railroad company are together discharging the duty of a common carrier.

The act to regulate commerce was intended to protect the public in its relations with certain common carriers. It was not the purpose to unnecessarily interfere with the private management of the

private property which is invested in the business of these carriers, and the act should be so construed as to leave to the carriers the greatest possible latitude in the management of their business, consistent with the proper protection of the public interest. It is difficult to understand how the public can have any concern in the contract provisions now before us for consideration. The railroad company might itself have instituted this express service. In that event these route agents would have been its own employees and the horses and wagons and provender its own property, all of which would have been transported by it without charge. In that event it would have handled through the medium of this express service its own packages of money and other valuables. If the railroad sees fit to turn this business over to an express company, what interest has the public in the mutual services rendered by railroad and express company for one another in so far as they are involved in the rendition of this public service? As was said by the court in the *Express cases, supra*:

So long as the public are served to their reasonable satisfaction it is a matter of no importance who serves them. The railroad company performs its whole duty to the public at large and to each individual when it offers all reasonable express accommodations. If this is done the railroad company owes no duty to the public as to the particular agencies it shall select.

The sixth section requires that carriers subject to the act shall in all cases publish the rates at which they afford their transportation services and that the rates specified shall be in every case observed. The Commission has held that these rates must be paid in money and can not be paid in commodities or by other services, and this view has been approved by the court in *United States v. C. I. & L. Ry. Co.*, 163 Fed. Rep., 114; but the sixth section only refers to those rates which are of public concern. The transportation provided for by these express contracts so far as it is involved in the performance of an express service upon that line of railroad is a private matter in which the public has no interest, and therefore need not be stated in the tariff.

The first section prohibits the free carriage of persons, with certain exceptions, which are named, among these being "employees * * * on express cars." It may be suggested that from this express provision of the statute, that the employees of express companies when in express cars are excepted from the general prohibition, it should be inferred that employees when not in express cars may not be carried free. It seems more reasonable, however, that this provision was inserted in the act out of an abundance of caution rather than to hold that Congress intended to interfere with the execution of contracts then in force and afterwards to be made, of the character under consideration.

This conclusion is in accordance with the previous holdings of the Commission in analogous cases.

A telegraph line is necessary for the operation of a railroad. The Commission holds that a railroad company may properly provide this facility by contract with a telegraph company and that as a part of this contract it may agree to transport free of charge men and materials needed in the erection, maintenance, and operation of such telegraph along its line of railroad. *In the Matter of Railroad Telegraph Contracts*, 12 I. C. C. Rep., 10.

In the operation of a railroad, eating houses must be maintained at which passengers en route can be fed. The Commission has ruled that a railroad company in providing by contract with a private individual for such eating houses may transport free of charge the persons and supplies required in their maintenance. *Administrative Ruling No. 87*.

In our opinion, therefore, the railroad company may transport free the men and supplies of the express company when employed or used in the conduct of the express business upon that line of railroad, and the express company may transport free for the railroad packages between points upon its own line of railroad. The first question should be answered in the affirmative.

The second question should, in our opinion, be answered in the negative. The men and supplies of an express company when intended for use at some point off the line of the railroad which is transporting them are not employed by the express company in discharging a service which the railroad might itself discharge or in the discharge of which the railroad company is directly interested. With respect to that transportation the express company is a mere shipper over the line of the railway company and should pay the tariff rate which is assessed against the general public. So, too, while the express company may properly carry, without reference to its tariffs, packages between points upon the line of the railroad with which the contract exists, it may not, by virtue of that contract, transport such packages free between points upon its route over another line of railway. In carrying such packages the express company serves the railroad as it serves the general public and must apply its tariff rates.

It is said that both parties are common carriers and that for this reason the provisions of the sixth section do not apply, but certainly one railroad company is not relieved from paying the tariff rate over another railroad upon its materials and supplies because it happens to be a common carrier. *Capital City Gas Co. v. Central Vermont Ry. Co. et al.*, 11 I. C. C. Rep., 104.

It is further urged that the railroad company has an interest in the business of the express company at points off its line, since express

matter received at such points may finally pass over the line of the railway; but this interest is altogether too indefinite to support the conclusion contended for. The fact that a package received in San Francisco may possibly pass over a line of railway in New England, upon which the same express company operates, is no sufficient reason why the New England railway may transport free materials and supplies intended for the use of that express company in San Francisco.

It is further suggested that the public has no interest in this free transportation and therefore that the act ought not to be held applicable; but the fact assumed is not correct. The public has or may have an interest. The express company may be at some point off the line of railroad in competition with some other express company as to business in which the railroad company has no concern whatever. If, now, this company can obtain free carriage for its men and its supplies while its rival is compelled to pay for such transportation, to that extent it acquires an unjust advantage, and one of exactly that sort which the act to regulate commerce was intended to prevent. The railroad company might, to be sure, give to the express company operating upon its line an advantage over its rival by awarding it an unduly favorable contract, and the effect of such a discrimination might be the same upon the rival company; but this kind of discrimination may be practiced in favor of any shipper from whom the railroad purchases materials or supplies, and can not be prevented unless the intent can be shown. For the purpose of making it easier to show the intent and therefore more difficult to grant the preference, the statute has provided that transportation shall in all cases be paid for in money, and this provision attaches to a common carrier as well as to a private person when that common carrier stands in the attitude of a shipper. These express companies sometimes erect large office buildings, of which they use a small part and rent the balance. Will it be claimed that a railroad might, under an express contract, provide for the free transportation of the materials used in the construction of that building?

It may also be noted upon this question of public interest that the dealer who sells supplies in the community where the express company operates is interested, since he can not compete with a similar dealer at other points if the express company can obtain its transportation for nothing.

This distinction between on and off the line business has been clearly drawn by the Commission in its decisions and rulings. Thus, *In the Matter of Telegraph Contracts, supra*, we held that while a railroad company might properly agree as a part of its contract providing a telegraph line for its use to transport free the materials and the men needed to construct and to operate such telegraph line, it could not further provide for the free transportation of men or sup-

plies not used in connection with that line along its right of way, and for the reason that if so used then the telegraph company in competition with other telegraph or telephone companies in other sections would obtain an important advantage. As to supplies and men not required to maintain the line which the railroad itself must otherwise maintain, we hold that the telegraph company must pay the same rate which every other telegraph and telephone company pays for the same transportation of the same commodities.

So, too, in case of the eating house. The railroad company may provide an eating house by contract with a private individual and may agree as a part of that contract to transport free the persons and the supplies required for the maintenance of the eating house, but if the proprietor, instead of confining his business to the passengers and employees of the railroad, opens his establishment to the general public; if he goes further than is necessary to provide the facility which the railroad company itself might have provided; if he comes into competition with the public, he must pay the same transportation charges and under the same limitations with the general public.

The express companies insist, finally, that these contracts must be held valid even as to the transportation of men and supplies for use at points off the line of the railroad itself, for the reason that Congress can not impair the obligation of a contract.

This assumes that the contracts were valid when made and have been rendered invalid by operation of the law. It seems to be the impression of the attorneys representing the express companies that the Hepburn amendment of 1906 for the first time contained those provisions of the act which are relied upon to invalidate these contracts. Such is not the fact. The contracts, so far as they have been examined by the Commission, were all entered into subsequent to the passage of the original act to regulate commerce in 1887. While the language of that statute was less explicit, and the prohibitions in some instances less emphatic, and the penalties less severe, the act itself contained all the essential provisions bearing upon this question which are embraced in the present amended statute. If these contracts are invalid in any respect to-day, they were equally invalid when entered into; hence this position is not well taken. But even if the express companies were right in their idea that the Hepburn amendment for the first time contained those requirements and provisions which these contracts violate, nevertheless we are of the opinion that the statute and not the contract must prevail.

The Constitution of the United States provides that Congress may regulate commerce between the states. This act is enacted in pursuance of that constitutional provision, and the defendants do not

contend in this proceeding that it is not a just exercise of that legislative power in Congress. Every contract must be made in view of the Constitution of the United States. There can be no such thing as a vested right against legislation of this character. Congress has power to regulate commerce among the states and no contract agreement between the corporation which handles that commerce and the party for whom it is handled can interfere with the complete exercise of that power by Congress. The express company or the railroad company as to off-the-line business stands like any other shipper. Congress in the exercise of its authority to regulate commerce has provided that railroads engaged in interstate traffic shall file their tariffs under which such traffic is carried and shall in no case depart from those tariffs. These contract provisions as applied to such off-the-line business are in violation of the statute, because the carrier is transporting these men and supplies without the publication of a tariff and at a rate different from that provided for the general public. Any contract to that effect, even if valid when entered into, must become invalid under the operation of the act. *Interstate Commerce Commission v. Chesapeake & Ohio Ry. Co.*, 200 U. S., 361.

16 I. C. C. Rep.

No. 1044.

INDIANAPOLIS FREIGHT BUREAU

v.

CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY
COMPANY ET AL.

Submitted May 1, 1908. Decided May 3, 1909.

1. Complainant alleges unjust discrimination against Indianapolis and undue preference in favor of Cincinnati, Louisville, New Albany, Evansville, and Chicago in the application of charges for the transportation of furniture, chairs, ladders, and vehicles to destinations in Texas, Arkansas, Oklahoma, and Louisiana under the so-called "two-for-one rule," permitting the application of carload rates on part car lots in excess of full carloads from Cincinnati, Louisville, New Albany, Evansville, and Chicago, whereas less than carload rates are charged on any excess from Indianapolis. The rule as applied on such shipments from the other points mentioned should be extended to Indianapolis, but in such modified form as to eradicate manipulation whereby one shipper secures an improper advantage over another, or else the minimum weights should be readjusted so as to conform with the actual loading capacity of cars.
2. Unjust discrimination is alleged against Indianapolis and in favor of Chicago in respect to class and commodity rates enforced by defendants on shipments to Oklahoma. A proper relationship is suggested between the class rates, also between commodity rates on roasted coffee, furniture (new, n. o. s.), kitchen, safes, iron and steel articles, stoves, and woodenware from Chicago and Indianapolis, respectively, to group points in Oklahoma. Rates on furniture (new, n. o. s.), kitchen safes, iron and steel articles, stoves, roasted coffee, and machinery for coal mines, carloads, from Indianapolis to Muskogee, should not exceed those contemporaneously in effect from Cincinnati.
3. Complainant also alleges that defendants unjustly discriminate against Indianapolis and give undue preference to Chicago, Cincinnati, Louisville, New Albany, and Evansville in the transportation of vehicles, chairs, furniture, and woodenware to Arkansas common points in that the local class rates to East St. Louis are applied on such shipments from Indianapolis to common points in Arkansas, whereas on similar shipments from Chicago and the other points of origin mentioned, arbitrary differential bases via East St. Louis are applied, which added to the rate beyond, result in lower through rates. The Commission is of the opinion that the several articles referred to should be accorded the same rates from Indianapolis as are applied from Cincinnati to Arkansas common points.
4. Unjust discrimination is alleged against Indianapolis in the application of class rates to points in Louisiana as compared with rates contemporaneously applied from Cincinnati and Louisville to same destinations. The Commission is of the opinion that class rates from Indianapolis should not exceed those contemporaneously charged from Cincinnati to points in Louisiana.

5. The matters involved herein will be held in abeyance until June 28, 1909, for the purpose of permitting carriers to check in the rates and file tariffs in conformance with the views expressed. If by that date the carriers have not filed tariffs containing the changes suggested, the Commission will then make such order as may appear necessary in the premises.

Edward E. Gates and *W. A. Ketcham* for complainant.

O. E. Butterfield for Cleveland, Cincinnati, Chicago & St. Louis Railway Company, and Lake Erie & Western Railroad Company.

Samuel O. Pickens and *John G. Williams* for Pittsburg, Cincinnati, Chicago & St. Louis Railway Company.

John G. Williams for Vandalia Railroad Company.

George W. Kretzinger for Chicago, Indianapolis & Louisville Railway Company, and Cincinnati, Hamilton & Dayton Railway Company.

E. B. Peirce for Evansville & Terre Haute Railroad Company; St. Louis & San Francisco Railroad Company; Chicago, Rock Island & Pacific Railway Company; Atchison, Topeka & Santa Fe Railway Company, and Southern Pacific Railway Company.

B. M. Flippin for St. Louis, Iron Mountain & Southern Railway Company, and Missouri Pacific Railway Company.

S. F. Andrews for Illinois Central Railroad Company; Louisville & Nashville Railroad Company; Southern Railway Company; Mobile & Ohio Railroad Company; Cincinnati, New Orleans & Texas Pacific Railway Company; Alabama Great Southern Railroad Company, and Vicksburg, Shreveport & Pacific Railway Company.

John E. Hollett, for Commercial Club of the city of Indianapolis, intervener.

C. C. Hanch, for Manufacturers' Association of Indianapolis, intervener.

H. C. Atkins, for Board of Trade of Indianapolis, intervener.

REPORT OF THE COMMISSION.

CLEMENTS, Commissioner:

The petition filed in this case alleges (1) the exaction by defendants of unjust and excessive charges for the transportation of certain light and bulky articles, particularly furniture, chairs, ladders, and vehicles, carloads, and part car lots in excess of full carloads, from Indianapolis, Ind., to common points in Texas and Arkansas, to all points in Oklahoma, and to points in Louisiana where through rates are constructed on the basis of differentials over the rates applying from East St. Louis and subject to the rules and conditions governing traffic destined to Texas common points, as compared with charges applied on the same commodities shipped under similar conditions from Cincinnati, Ohio; Louisville, Ky.; New Albany and Evansville, Ind., and Chicago, Ill., to the same destinations, in that less than carload rates are charged on part car lots in excess of full carloads from Indianapolis

whereas from Cincinnati, Louisville, New Albany, Evansville, and Chicago carload rates are applied thereon under a rule permitting the use of two cars, the combined measurement of which is not in excess of 80 feet, on the basis of actual weight, subject to "the highest minimum weight and the lowest rate provided for one car;" (2) that defendants, with the exception of the Southern Pacific Company and the Texas & Pacific Railway Company, unjustly discriminate against Indianapolis and in favor of Chicago in respect to class and commodity rates enforced by them on shipments to Oklahoma; (3) unjust discrimination against Indianapolis and in favor of Chicago, Cincinnati, Louisville, New Albany, and Evansville in the application of rates on vehicles, chairs, furniture, and woodenware to Arkansas common points, in that the local class rates to East St. Louis are applied on through shipments from Indianapolis destined to common points in Arkansas, whereas from Chicago and the other points of origin above mentioned arbitrary differential bases are published to East St. Louis, which, added to the rate beyond, result in lower through rates; and (4) that defendants unjustly discriminate against Indianapolis in the application of class rates to points in Louisiana as compared with rates contemporaneously applied from Cincinnati and Louisville to same destinations.

THE SO-CALLED "TWO-FOR-ONE RULE."

The rule in effect from Cincinnati, Chicago, Jeffersonville, Louisville, and Evansville with respect to the carload minimums and loading requirements applicable to the transportation of light and bulky articles subject to Rule 6-B of the Western Classification, such as vehicles, furniture, chairs, stepladders, etc., destined to common points in Texas and Arkansas, points in Louisiana to which through rates are constructed on the basis of differentials over the East St. Louis rates, and all points in Oklahoma, provides that where a car of sufficient capacity to accommodate such shipments can not be promptly furnished two smaller cars will be provided, subject to the carload rate and minimum applicable on the larger car. This rule does not apply at any point from which rates are made subject to the Official Classification.

Under Southwestern Tariff Committee 1-CC, I. C. C. No. 481, Supplement 14, item 1484, in effect at the time of filing complaint, April 26, 1907, the following rule governing transportation of light and bulky articles, carloads, applied interstate to Texas points:

When the railroad company is unable to furnish car to accommodate minimum weight of shipments of light and bulky articles, the rates on which are subject to item No. 11 herein, two cars may be used, freight charges to be assessed on the contents of both cars on the basis of actual weight, subject to the minimum weight provided in item No. 11 herein for a car 50 feet in length. Will not apply where the combined length of the two cars used is in excess of 80 feet.

The above rule will not apply from points in territories named below:

Dayton-South Bend territory,

Detroit-Cleveland territory,

Middlesborough territory (except in connection with the Southern Railway and Virginia & Southwestern Railway Company),

Pittsburg territory,

Cincinnati territory (except Cincinnati, Ohio; Covington, Ludlow, and Newport, Ky.),

Louisville territory (except Louisville, Owensboro, and Henderson, Ky., Jeffersonville, New Albany, Evansville, Tell City, Troy, Jasper, and Birds Eye, Ind.).

The limitation on the length of the two smaller cars which are provided where a larger car can not be furnished was changed from 80 to 72 feet, effective July 26, 1907.

While it will be noted Indianapolis is excluded from the general application of this rule, the following clause governing the transportation of vehicles, as described in item 135, Southwestern Tariff Committee Classification Exception 1-V, I. C. C. No. 485, from points in Chicago-Cincinnati territory east of the Illinois-Indiana state line, except Cincinnati, Ohio and Covington, Ludlow, and Newport, Ky., from Dayton-South Bend territory and from Detroit-Cleveland territory, does apply from Indianapolis to Texas common points, to wit:

When the railroad company is unable to furnish car to accommodate the minimum weight of shipments of passenger and freight vehicles, two cars may be used, freight charges to be assessed on the contents of both the cars on basis of actual weight, subject to the minimum weight provided in item No. 11 for car 50 feet in length. Will not apply where the combined length of the two cars used is in excess of 72 feet.

It is contended by the carriers that the application of this so-called "two-for-one rule" to the transportation of vehicles from Indianapolis to Texas common points was due to a mistake in compiling Supplement 16 to George W. Cale's I. C. C. No. 485 and J. F. Tucker's I. C. C. No. 20, effective November 27, 1907, and for that reason was canceled January 13, 1908, but it appears that the rule is carried, with some slight modifications, in Texas Tariff No. 1-EE, I. C. C. No. 504, item 110, effective January 21, 1908.

The through rate on vehicles from Indianapolis to Texas common points is made in connection with Western Classification, under which the two-for-one rule applies. This rule, however, does not apply under the Official Classification, which governs the application of rates on other commodities from Indianapolis to Texas common points and on all commodities to the other territories mentioned. It is contended by defendants that the Central Freight Association roads operating from Cincinnati were forced by the competition of western lines to accord the two-for-one rule at that place, and that this competition does not exist at Indianapolis; that the rule is generally applicable only in territory governed by the Western Classification and that its

extension to Indianapolis would also necessitate its application generally from points in Official Classification territory.

The effect of these rules, which are in substance similar in their application to the several territories mentioned in the complaint, is to enable shippers at points from which the rules apply to load the minimum prescribed for a 50-foot car into any equipment which may be available and have the carload rate applied on the entire shipment.

At the other points from which the general rule applies shippers invariably have the benefit of the carload rate on any excess loaded in a second car, whereas at Indianapolis the less-than-carload rate is charged on such excess. And it is not a prerequisite to the application of this rule that the shipper shall request and the carrier fail to furnish a 50-foot car.

A rule in part conforming to that recommended by the Commission in Administrative Ruling No. 77 of Tariff Circular 15-A is carried in Supplement 16 to George W. Cale's I. C. C. No. 485 and J. F. Tucker's I. C. C. No. 20, relating to the minimum weights on light and bulky freight. This rule, however, does not apply from Indianapolis, its application being specifically defined as follows:

Where ratings are subject to this item, or to Rule 6-B of the Western Classification, lines will assess minimum weight based on length of car shipper may order, where it is impossible for such line to furnish the length of car ordered and are compelled to furnish a car of greater length.

The above rule will not apply from:

Points in Louisville territory in Indiana, except Mount Vernon, Evansville, New Albany, and Jeffersonville.

Points in Chicago-Cincinnati territory in Indiana and Ohio, except Lawrenceburg, Ind.; Cincinnati, Brighton, Ivorydale, St. Bernard, Cummins ville, Windam Place, Elmwood Place, Norwood, East Norwood, Sedamsville, Addyston, Riverside, Linwood, Carthage, and Fairmount, Ohio.

Points in Dayton-South Bend, Detroit-Cleveland, and Pittsburg territories.

It is claimed by defendants that there is no such necessity for the application of this rule at Indianapolis as at Chicago, where it is considered a necessary incident to the grain and live-stock traffic, in which Indianapolis does not engage to any great extent, the latter being more interested in the furniture traffic; and since the standard car for such shipments is 36 feet in length and the carriers are always able to furnish such equipment, they assert that there is no class of traffic at Indianapolis which is adversely affected by the non-application of such a rule at that point.

The effect of the nonavailability to the Indianapolis shipper of the general rules above described may be briefly summarized thus:

If he orders a 40-foot car and the carrier is unable to furnish that, but does furnish a 50-foot car, he is required to pay charges on the minimum weight prescribed for the 50-foot car, and where he orders

a 50-foot car and the carrier is only able to furnish one 40 feet in length he must pay the higher rate applying on the lower minimum prescribed for the smaller equipment and the less than carload rate on any excess.

The minimum prescribed by the Western Classification to apply on shipments of vehicles loaded in 50-foot cars is 22,720 pounds. Complainants contend, however, that it is impossible to load such shipments in excess of 20,000 pounds. Under the so-called two-for-one rule the Cincinnati shipper with 22,720 pounds of vehicles destined to a point in Arkansas might obtain the carload rating on the whole consignment by using two cars the combined measurement of which is not in excess of 72 feet. It would not be necessary for him to order a 50-foot car to entitle him to this advantage; with one 50-foot car and two 36-foot cars available he would load the two smaller cars and thereby obtain on the entire consignment the lower rate applicable on the minimum prescribed for the 50-foot car. The charges in such case are, of course, assessed upon the actual weight loaded in the two cars used, provided always such actual weight exceeds the minimum prescribed for 50-foot cars, so that even if the shipper orders a 45-foot car and has only sufficient freight to enable him to load up to the minimum prescribed therefor but finds it necessary to use two 36-foot cars, the shipment will nevertheless be subject to the 50-foot minimum.

The minimum on vehicles from Indianapolis is 14,000 pounds for each 36-foot car used, irrespective of the fact that an entire consignment moves forward as a single shipment in two such cars billed out at the same time; whereas from Cincinnati, under the two-for-one rule, two 36-foot cars combined would be subject to the minimum of 22,720 pounds prescribed for a 50-foot car, or 11,360 pounds each.

A maximum of 12,000 pounds of stepladders can be loaded into a 50-foot car, notwithstanding which the carload minimum is fixed at 21,600 pounds. A 36-foot car will contain about 8,500 pounds of set-up assorted chairs; a 40-foot car 10,500 pounds; a 45-foot car 12,000 pounds, and a 50-foot car about 13,000 pounds. The actual capacity of a 50-foot car for the loading of vehicles is between 18,000 and 20,000 pounds, or from 35 to 40 vehicles, including buggies, spring wagons, and surreys.

It is claimed that the discrimination worked by the application of the two-for-one rule at competitive points, such as St. Paul, Chicago, Davenport, and Cincinnati, and its nonapplication from Indianapolis prevents the shipment of stepladders, kitchen woodenware, and furniture from the last-mentioned place to the Texas, Arkansas, Oklahoma, and Louisiana markets to a greater extent than does the discrimination worked by the freight rate itself.

The carriers strongly maintain that the application of the so-called two-for-one rule gives rise to manipulation on the part of shippers, especially at small stations where it can first be ascertained that there is no large car available, and then by ordering such equipment, with knowledge that it can not be supplied, the shipper improperly secures the benefit of the rule. Thus, it is claimed, the rule may be so manipulated by one shipper as to give him an advantage over others shipping from the same point.

It is apparent, however, that there would not be the same incentive to manipulate the rule were a proper minimum prescribed in each case and were cars susceptible of being loaded with the amount of freight upon which the shipper is compelled to pay charges.

Again, if tariffs specifically designate the "lighter and bulkier" articles upon which the lower minimum and the higher rates apply, and also the other classes of articles susceptible of heavier loading and therefore taking a lower rate, instead of simply naming the respective minima and rates applicable thereto without reference to the different articles upon which different rates shall apply, the opportunity for manipulation of the rule would be thereby obviated. The shipper of the lighter and bulkier commodities specifically designated in the tariff to take a given rate would in the face of such tariff provision be in violation of section 10 of the act, which forbids false classification, etc., were he to attempt to secure by manipulation of the two-for-one rule the application of a rate lower than that to which he is properly and lawfully entitled under the tariffs.

While we are satisfied that the application of the rule in question at points which come into active competition with Indianapolis in the territory referred to and its nonapplication from the latter place result in handicapping and restricting the trade of Indianapolis, we do not think it proper to extend the rule in its present form. In fact, it may be proper to state at this time that the maintenance of the rule at Chicago and other points is unlawful if, as defendants' witnesses testify, it lends itself to manipulation whereby one shipper secures an improper advantage over another; and if the Commission can secure reliable information as to actual cases of this sort, steps will be taken immediately to apply a remedy. We think the carriers should amend the present rule, wherever it is applied, so as to restrict and modify its application in such manner that manipulation and abuses will be eradicated, and this should be done by such clear and unambiguous wording as will make those violating the same liable to prosecution under the law. When this shall have been accomplished, the greatest objection to the extension of the rule to Indianapolis will have been obviated. It seems clear either that a rule

modified in the manner above indicated should be extended to Indianapolis, or else that there should be a readjustment of the minimum weights on the various articles referred to in this complaint so that they will conform approximately to the actual loading capacity of cars, to the end that unjust discrimination against Indianapolis and in favor of the other competitive points referred to shall be removed.

This matter will be retained, and if the carriers have been unable to remove the cause of complaint on or before June 28, 1909, we will then make such order as may appear necessary and proper.

RATE ADJUSTMENT TO OKLAHOMA POINTS.

Oklahoma is divided into several groups for the application of rates from St. Louis, Chicago, St. Paul, and Cincinnati territory. Taking representative points in each of these groups, the rates, as of January 10, 1909, on classes 1 to 5 and A to E, inclusive, from the several points above mentioned and from so-called Cincinnati territory, including Indianapolis, may be stated as follows:

Class rates to Oklahoma points, in cents per 100 pounds.

	1.	2.	3.	4.	5.	A.	B.	C.	D.	E.
To Vinita—										
From St. Louis.....	106	83	73	55	43	45	36	27	24	19
Chicago differential over St. Louis.....	20	20	10	5	5	7½	7½	5	5	5
Through rate from Chicago.....	125	103	83	60	48	52½	43½	32	29	24
St. Paul differential over Chicago.....	5	4	3	2	1	2	1	1	1½	1
Through rate from St. Paul.....	130	107	86	62	49	54½	44½	33	30½	25
Rate from Indianapolis (Cincinnati territory maximum rate).....	148	124	102	85	67	74	61	49	43	34
To Wagoner—										
From St. Louis.....	115	100	80	64	48	51	44	32	28	23
Chicago differential over St. Louis.....	20	20	10	5	5	7½	7½	5	5	5
Through rate from Chicago.....	135	120	90	69	53	58½	51½	37	33	28
St. Paul differential over Chicago.....	5	4	3	2	1	2	1	1	1½	1
Through rate from St. Paul.....	140	124	93	71	54	60½	52½	38	34½	29
Rate from Indianapolis (Cincinnati territory maximum rate).....	148	124	102	85	67	74	61	49	43	34
To Muskogee—										
From St. Louis.....	115	100	80	64	48	51	44	35	31	25
Chicago differential over St. Louis.....	20	20	10	5	5	7½	7½	5	5	5
Through rate from Chicago.....	135	120	90	69	53	58½	51½	40	36	30
St. Paul differential over Chicago.....	5	4	3	2	1	2	1	1	1½	1
Through rate from St. Paul.....	140	124	93	71	54	60½	52½	41	37½	31
Rate from Indianapolis (Cincinnati territory maximum rate).....	148	124	102	85	67	74	61	49	43	34
To Claremore—										
From St. Louis.....	115	100	80	65	52	54	44	32	31	25
Chicago differential over St. Louis.....	20	20	10	5	5	7½	7½	5	5	5
Through rate from Chicago.....	135	120	90	70	57	61½	51½	37	36	30
St. Paul differential over Chicago.....	5	4	3	2	1	2	1	1	1½	1
Through rate from St. Paul.....	140	124	93	72	58	63½	52½	38	37½	31
Rate from Indianapolis (Cincinnati territory maximum rate).....	148	124	102	85	67	74	61	49	43	34
To McAlester—										
From St. Louis.....	120	100	85	69	55	57	49	39	35	29
Chicago differential over St. Louis.....	20	20	10	5	5	7½	7½	5	5	5
Through rate from Chicago.....	140	120	95	74	60	64½	56½	44	40	34
St. Paul differential over Chicago.....	5	4	3	2	1	2	1	1	1½	1
Through rate from St. Paul.....	145	124	98	76	61	66½	57½	45	41½	35
Rate from Indianapolis (Cincinnati territory maximum rate).....	148	124	102	85	67	74	61	49	43	34

Class rates to Oklahoma points, in cents per 100 pounds—Continued.

	1.	2.	3.	4.	5.	A.	B.	C.	D.	E.
To Newkirk—										
From St. Louis.....	128	104	88	72	60	60	46	30	32	25
Chicago differential over St. Louis.....	20	20	10	5	5	7½	7½	5	5	5
Through rate from Chicago.....	148	124	98	77	65	67½	53½	44	37	30
St. Paul differential over Chicago.....	5	4	3	2	1	2	1	1	1½	1
Through rate from St. Paul.....	151	128	101	79	66	69½	54½	45	38½	31
Rate from Indianapolis (Cincinnati territory maximum rate).....	150	129	100	94	74	74	61	52	43	34
To Pawnee—										
From St. Louis.....	128	106	93	78	63	63	52	43	36	29
Chicago differential over St. Louis.....	20	20	10	5	5	7½	7½	5	5	5
Through rate from Chicago.....	148	126	103	83	68	70½	59½	48	41	34
St. Paul differential over Chicago.....	5	4	3	2	1	2	1	1	1½	1
Through rate from St. Paul.....	153	130	106	85	69	72½	60½	49	42½	35
Rate from Indianapolis (Cincinnati territory maximum rate).....	150	129	100	94	74	74	61	52	43	34
To Chandler, Guthrie, and Oklahoma City—										
From St. Louis.....	130	109	97	82	63	65	55	46	30	32
Chicago differential over St. Louis.....	20	20	10	5	5	7½	7½	5	5	5
Through rate from Chicago.....	150	129	107	87	68	72½	62½	51	40	37
St. Paul differential over Chicago.....	5	4	3	2	1	2	1	1	1½	1
Through rate from St. Paul.....	155	133	110	89	69	74½	63½	52	45½	38
Rate from Indianapolis (Cincinnati territory maximum rate).....	150	129	100	94	74	74	61	52	43	34

Heretofore various maximum commodity rates were published from Cincinnati territory to points in Oklahoma in conjunction with the class rates, the tariffs providing that the maximum commodity rates therein named should be applicable only when lower than class rates. While the rates as shown in the above tables are now in effect, rates from Cincinnati territory are no longer published as maximum rates, but are simply named as through rates to apply on traffic generally. However, section 2 of Agent Leland's tariff, I. C. C. No. 513, naming rates from Cincinnati territory, carries a clause which provides, "If the rate named in section No. 1 of this tariff between any two points is less than the rate on the same article in section No. 2 of the tariff, the rate named in section No. 1 will apply."

Section No. 1 names rates from St. Louis, Memphis, Peoria, Chicago, St. Paul territories, and also names certain differentials over St. Louis to apply from Central Freight Association points, including Indianapolis. The carriers claim that it has been their practice to protect the lower combination via St. Louis on presentation of claim and expense bills where shipments move via St. Louis or any other gateway making a lower combination, as per authority contained in rule 71 of the Commission's Tariff Circular 15-A.

As will be seen by reference to these tables, the St. Louis rates vary to the several Oklahoma groups, but as a rule the same rate applies from Cincinnati and Indianapolis to all points in that part of the state formerly known as Oklahoma Territory and a blanket rate to points in what was formerly Indian Territory.

The St. Louis rate is used as the basis for constructing the rate from Chicago, which, as already shown, is made a fixed differential above the St. Louis rate, and thus the same relationship is maintained between the rates from these respective points to the several groups in the state of Oklahoma, so that the differences in the rates from Chicago to these several groups are marked by the rates from St. Louis. In actual practice a shipment from Chicago might move through Kansas City, but the St. Louis basic rate is nevertheless added to the Chicago differential in the application of the through rate.

In the division of the through rate from Chicago the roads performing the haul to St. Louis receive a greater proportion than is expressed by the differential.

The comparative short-line distances from Indianapolis, Cincinnati, Chicago, and St. Paul to representative Oklahoma points are as follows:

Short line distances to Oklahoma points.

To—	From Indianapolis.	From Cincinnati.	From Chicago.	From St. Paul.
	Miles.	Miles.	Miles.	Miles.
Vinita.....	603	700	637	720
Bartlesville.....	690	787	646	729
Wagoner.....	652	749	686	769
Tulsa.....	667	764	701	785
Muskogee.....	668	765	702	786
Wister.....	696	793	734	866
McAlester.....	760	857	764	847
Oklahoma City.....	785	882	792	876
Enid.....	788	885	778	851
Claremore.....	641	738	675	758
Jennings.....	702	799	708	791
Perry.....	751	848	758	841
Guthrie.....	775	872	776	866
Luther.....	758	855	766	849
Chickasha.....	824	921	831	914

There are several through lines reaching Oklahoma from Chicago, while from Cincinnati and Indianapolis the transportation service is invariably performed by two or more connecting carriers.

From Chicago, St. Louis, Indianapolis, and Cincinnati to Oklahoma the rates are adjusted with regard to the rates to Kansas on the north and Texas on the south. Chicago enjoys through rates constructed on the differential basis to Kansas as well as to Texas points, whereas from Indianapolis the through rates to Kansas are made up of the combination of locals via Mississippi River crossings, resulting in the application of somewhat higher aggregate charges than from Chicago. To Texas common points, however, the rates from Indianapolis are the same as from Chicago. The differentials published from Chicago to Mississippi River crossings as applicable on through traffic to Kansas are substantially the same as the differ-

entials applied on through shipments to Texas. The carriers contend that this relative adjustment as between Chicago and Indianapolis influences the rates to northeastern Oklahoma points to the extent that it is found necessary to maintain the same relative adjustment between these respective points of origin on Oklahoma traffic as obtains on Kansas traffic. The through rates from Chicago and Indianapolis, respectively, to Texas points influence in an entirely different way the adjustment of rates to southern Oklahoma. The rates from the two points of origin to Texas being identical it is deemed necessary to grade down the differences appearing in the rates to Kansas so that they will diminish as the Texas line is approached. Thus, the differences appearing in the rates from Chicago and Indianapolis, respectively, to Kansas points and to points in northern Oklahoma affected by the Kansas adjustment become less apparent in the rates to points in southern Oklahoma as affected by the Texas adjustment.

The carriers contend that it has been their purpose to adhere as closely as possible to a system of grading down and practically vitiating in the rates to points in the southern part of Oklahoma the greater differences between the Chicago and Indianapolis rates to Kansas and northern Oklahoma, which differences to points in Oklahoma near the Kansas state line result from the influence of the Kansas rates, constructed from Chicago on differential bases and from Indianapolis upon the combination of locals on Mississippi River crossings.

It is claimed by complainant that a proper system of grading is effected in the rates from St. Louis, which are used as bases for constructing rates from points in territory north and east, so that rates from St. Louis being already graded according to distance, Chicago, by reason of its fixed differentials over St. Louis, is given the benefit thereof; whereas Indianapolis, not being accorded such differentials, is thereby denied a proper relative adjustment. Indianapolis already has a differential basis to points in Texas, Arkansas, and Louisiana, and it is contended that the extension of such basis to Oklahoma for application on traffic from Indianapolis would not disturb rates generally in Central Freight Association territory, which is already grouped for the application of the differential basis on traffic destined to certain points in the other states mentioned.

We are of the opinion that rates on the several classes from Indianapolis to Vinita, Muskogee, Wagoner, Claremore, and group points should not exceed rates contemporaneously charged from Chicago on the same classes to same destinations in Oklahoma by more than the following:

Class....	1	2	3	4	5	A	B	C	D	E
Rate....	10	8	7	6	5	6	6	5	5	5

This adjustment, if effected by reductions in Indianapolis rates, will result in the present establishment of through rates from Indianapolis to Vinita and group points, as follows:

Class....	1	2	3	4	5	A	B	C	D	E
Rate....	135	111	90	66	53	58½	49½	37	34	29

being reductions from the existing rates of

13	13	12	19	14	15½	11½	12	9	5
----	----	----	----	----	-----	-----	----	---	---

From Indianapolis to Wagoner and group points:

145	128	97	75	58	64½	57½	42	38	33
-----	-----	----	----	----	-----	-----	----	----	----

being reductions from existing rates of

3	0	5	10	9	9½	3½	7	5	1
---	---	---	----	---	----	----	---	---	---

From Indianapolis to Muskogee and group points:

145	128	97	75	58	64½	57½	45	41	35
-----	-----	----	----	----	-----	-----	----	----	----

being reductions from the existing rates of

3	0	5	10	9	9½	3½	4	2	0
---	---	---	----	---	----	----	---	---	---

From Indianapolis to Claremore and group points:

145	128	97	76	62	67½	57½	42	41	35
-----	-----	----	----	----	-----	-----	----	----	----

being reductions from the existing rates of

3	0	5	9	5	6½	3½	7	2	0
---	---	---	---	---	----	----	---	---	---

Rates on the several classes from Indianapolis to McAlester and group points should not exceed those contemporaneously in effect from Chicago by more than the following:

8	6	5	4	3	4	4½	3	3	2
---	---	---	---	---	---	----	---	---	---

resulting in the present establishment of through rates to McAlester and group points, on the basis of Chicago rates as hereinbefore shown, as follows:

148	126	100	78	63	68½	61	47	43	36
-----	-----	-----	----	----	-----	----	----	----	----

being reductions from the existing rates of

0	0	2	7	4	5½	0	2	0	0
---	---	---	---	---	----	---	---	---	---

Rates on the several classes from Indianapolis to Newkirk and group points should not exceed those contemporaneously in effect from Chicago by more than the following:

4	4	4	4	3	4	4	4	4	4
---	---	---	---	---	---	---	---	---	---

resulting in the present establishment of through rates from Indianapolis to Newkirk and group points of

Class....	1	2	3	4	5	A	B	C	D	E
Rate....	150	128	102	81	68	71½	57½	48	41	34

being reductions from the existing rates of

0	1	7	13	6	2½	3½	4	2	0
---	---	---	----	---	----	----	---	---	---

Rates on the several classes from Indianapolis to Pawnee and group points should not exceed those contemporaneously in effect from Chicago by more than the following:

2	2	2	2	2	2	2	2	2	0
---	---	---	---	---	---	---	---	---	---

resulting in the present establishment of through rates from Indianapolis to Pawnee and group points:

150	128	105	85	70	72½	61½	50	43	34
-----	-----	-----	----	----	-----	-----	----	----	----

being reductions from the existing rates of

0	1	4	9	4	1½	0	2	0	0
---	---	---	---	---	----	---	---	---	---

Rates on the several classes from Indianapolis to Chandler Guthrie, and Oklahoma City, and group points appear to be adjusted on a proper relative basis and no changes will be suggested at this time in respect thereto.

The following tables show the commodity rates from Indianapolis, specifically complained of in the petition, together with the rates resulting from certain modifications made subsequent to the filing of complaint; also the rates from Chicago:

Coffee (roasted), carload rates, in cents per 100 pounds.

To—	From Chicago, Oct. 1, 1908.	From Cincinnati territory, which includes Indian- apolis.	
		On date petition filed.	Oct. 1, 1908.
C., R. I. & P. Ry. stations, Caston to McAlester	55	67	68
M., K. & T. Ry. stations, Rentiesville to McAlester	55	67	68
M., K. & T. Ry. stations, Vinita to Verdard	48	67	68
Mo. Pac. Ry. stations, Polson to Fort Gibson	48	67	68
M., O. & G. Ry. stations, Wagoner	48	67	68
St. L. & S. F. Ry. stations, Vinita to Bacone	48	67	68

Furniture, new, n. o. s. (kitchen safes), carload rates, in cents per 100 pounds.

To—	From Chicago, Oct. 1, 1908.	From Indian- apolis, Oct. 1, 1908.
M., K. & T. Ry. stations, Russell Creek to Verdank:		
Furniture, n. o. s	70½	83
Kitchen safes	48	49
Mo. Pac. Ry. stations, Polson to Fort Gibson;		
Furniture, n. o. s	81½	83
Kitchen safes	48	49
M., O. & G. Ry. stations, Wagoner;		
Furniture, n. o. s	81½	83
Kitchen safes	48	49
St. L. & S. F. Ry. stations, Wyandotte to Bacone;		
Furniture, n. o. s	70½	83
Kitchen safes	48	49

Iron and steel articles, carload rates, in cents per 100 pounds.

To—	From Chicago.		From Cincinnati territory (applies from Indianapolis as intermediate).	
	On date petition filed.	Oct. 1, 1908.	On date petition filed.	Oct. 1, 1908.
C., R. I. & P. Ry. stations, Caston to McAlester	48	50	57	58½
M., K. & T. Ry. stations:				
Vinita to Bacone	^a 48	48	57	52
Summit to McAlester	50	50	59	58½
Mo. Pac. Ry. stations, Polson to Fort Gibson	48	50	57	58½
M., O. & G. Ry. stations, Wagoner	48	50	57	58½
St. L. & S. F. Ry. stations, Vinita to Claremore	48	50	57	58½

^a Muskogee rate applied as maximum.

Stoves, carload rates, in cents per 100 pounds.

To—	From Chicago, Oct. 1, 1908.	From Cin- cinnati ter- ritory (ap- plies from Indianapo- lis as inter- mediate).
C., R. I. & P. Ry. stations, Caston to McAlester	55	67
M., K. & T. Ry. stations, Rentiesville to McAlester	55	67
M., K. & T. Ry. stations, Vinita to Verdank	48	67
Mo. Pac. Ry. stations, Polson to Fort Gibson	48	67
M., O. & G. Ry. stations, Wagoner	48	67
St. L. & S. F. Ry. stations, Vinita to Bacone	48	67

Woodenware, carload rates, in cents per 100 pounds.

To—	From Chicago, Oct. 1, 1908.	From Cincinnati territory, Oct. 1, 1908.
A., T. & S. F. Ry. stations, Tulsa	64	80
Midland Valley Ry. stations, Tulsa	64	80
M., K. & T. Ry. stations, Vinita to Tulsa	64	80
M., O. & G. Ry. stations, Wagoner	64	80
St. L. & S. F. Ry. stations, Vinita to Fort Gibson	64	88
C., R. I. & P. Ry. stations, Caston to McAlester	69	80
M., K. & T. Ry. stations, Oktaha to McAlester	69	80

Commodity rates to Muskogee, Okla., in cents per 100 pounds.

Commodity.	From Chicago.		From St. Paul.		From Cincinnati.		From Indianapolis.	
	In effect on date of hearing.	Present rate, Jan. 10, 1909.	In effect on date of hearing.	Present rate, Jan. 10, 1909.	In effect on date of hearing.	Present rate, Jan. 10, 1909.	In effect on date of hearing.	Present rate, Jan. 10, 1909.
Furniture, n. o. s.....carloads..	50½	67½	61½	69½	72	69	83	83
Kitchen safes.....do.....	50½	50	61½	51½	72	51	83	51
Iron and steel articles.....do.....	48	43	49	44	52	47	52	47
Stoves.....do.....	48	65	49	66	67	67	67	67
Coffee (roasted).....do.....	48	52½	49	53½	68	54½	68	54½
Machinery (for coal mines) a.....								

a Commodity rates canceled.

Since the hearing was had in this case the carriers have rearranged the groupings of points and have also readjusted rates on the several commodities shown in the above tables, as follows:

Coffee (roasted), carload rates, in cents per 100 pounds.

To—	From Chicago.		From Cincinnati territory, which includes Indianapolis.	
	Former rate.	Present rate.	Former rate.	Present rate.
Caston, C. R. I. & P. Ry.....	55	55	68	57
McAlester, C. R. I. & P. Ry.....	55	52½	68	54½
Rentiesville and McAlester, M. K. & T. Ry.....	55	52½	68	54½
Vinita and Verdark, M. K. & T. Ry.....	48	52½	68	54½
Polson and Fort Gibson, Mo. Pac. Ry.....	48	55	68	57
Wagoner, M. O. & G. Ry.....	48	52½	68	54½
Vinita, St. L. & S. F. Ry.....	48	55	68	57
Bacone, St. L. & S. F. Ry.....	48	52½	68	54½

Furniture, new, n. o. s., carload rates, in cents per 100 pounds.

To—	From Chicago.		From Indianapolis.	
	Former rate.	Present rate.	Former rate.	Present rate.
Russell Creek and Verdark, M. K. & T. Ry.....	70½	67½	83	69
Polson, Mo. Pac. Ry.....	81½	81½	83	69
Fort Gibson, Mo. Pac. Ry.....	81½	67½	83	83
Wagoner, M. O. & G. Ry.....	81½	67½	83	69
Wyandotte, St. L. & S. F. Ry.....	70½	72½	83	74
Bacone, St. L. & S. F. Ry.....	70½	67½	83	69

Kitchen safes, carload rates, in cents per 100 pounds.

To—	From Chicago.		From Indianapolis.	
	Former rate.	Present rate.	Former rate.	Present rate.
Russell Creek and Verdark, M. K. & T. Ry.....	48	50	49	51
Polson and Fort Gibson, Mo. Pac. Ry.....	48	50	49	51
Wagoner, M. O. & G. Ry.....	48	50	49	51
Wyandotte and Bacone, St. L. & S. F. Ry.....	48	50	49	51

Iron and steel articles, carload rates, in cents per 100 pounds.

To—	From Chicago.		From Cincinnati territory (applies from Indianapolis as intermediate).	
	Former rate.	Present rate.	Former rate.	Present rate.
Caston, C. R. I. & P. Ry.....	50	60	58½	62
McAlester, C. R. I. & P. Ry.....	50	46	58½	50
Vinita, M. K. & T. Ry.....	48	46	52	50
Bacone, M. K. & T. Ry.....	48	43	52	47
Summit and McAlester, M. K. & T. Ry.....	50	46	58½	50
Polson, Mo. Pac. Ry.....	50	55	58½	57
Fort Gibson, Mo. Pac. Ry.....	50	43	58½	47
Wagoner, M. O. & G. Ry.....	50	46	58½	50
Vinita, St. L. & S. F. Ry.....	50	55	58½	57
Claremore, St. L. & S. F. Ry.....	50	46	58½	50

Stoves, carload rates, in cents per 100 pounds.

To—	From Chicago.		From Cincinnati territory (applies from Indianapolis as intermediate.)	
	Former rate.	Present rate.	Former rate.	Present rate.
Caston and McAlester, C. R. I. & P. Ry.....	55	65	67	Same; no change.
Rentiesville and McAlester, M. K. & T. Ry.....	55	65	67	Do.
Vinita and Verdard, M. K. & T. Ry.....	48	65	67	Do.
Polson and Fort Gibson, Mo. Pac. Ry.....	48	65	67	Do.
Wagoner, M. O. & G. Ry.....	48	65	67	Do.
Vinita and Bacone, St. L. & S. F. Ry.....	48	65	67	Do.

Woodenware, carload rates, in cents per 100 pounds.

To—	From Chicago.		From Cincinnati territory.	
	Former rate.	Present rate.	Former rate.	Present rate.
Tulsa, A. T. & S. F. Ry.....	64	81	80	86
Tulsa, Midland Valley Ry.....	64	74	80	85
Vinita and Tulsa, M. K. & T. Ry.....	64	74	80	85
Wagoner, M. O. & G. Ry.....	64	71	80	85
Vinita, St. L. & S. F. R. R.....	64	81	80	86
Fort Gibson, St. L. & S. F. R. R.....	64	71	80	85
Caston, C. R. I. & P. Ry.....	69	81	80	86
McAlester, C. R. I. & P. Ry.....	69	71	80	85
Oaktah and McAlester, M. K. & T. Ry.....	69	71	80	85

In the opinion of the Commission rates on roasted coffee, in carloads, from Indianapolis to the several groups of points in Oklahoma should not exceed those contemporaneously in effect from Chicago by more than 5 cents per 100 pounds; on furniture, new, n. o. s., carloads, by more than 4 cents; on kitchen safes, carloads, by more than 1 cent; on iron and steel articles, carloads, by more than 4 cents; on stoves, carloads, by more than 4 cents; and on woodenware, carloads, by more than 5 cents per 100 pounds.

Rates on furniture, new, n. o. s., kitchen safes, iron and steel arti-
cles, stoves, roasted coffee, and machinery for coal mines, carloads,
from Indianapolis to Muskogee should not exceed those contempo-
raneously in effect from Cincinnati.

ARKANSAS.

Rates from Chicago and Cincinnati territory, including Indianapolis,
to Arkansas common points, are ordinarily constructed on fixed
differentials above the rates from East St. Louis, as follows:

Class	1	2	3	4	5	A	B	C	D	E
Differential....	20	16	12	10	7	9	8	7	6	5

These differentials apply on all traffic from Chicago and Cincinnati,
but on a number of commodities classified as light and bulky articles,
such as furniture, chairs, barrels, ladders, etc., they do not apply
from Indianapolis, the local class rates to East St. Louis being charged
on such shipments.

The following table shows rates on furniture and chairs, in effect
at the time complaint was filed, from Indianapolis, Chicago, Cincin-
nati, and various other points to the respective basing points used
in constructing through rates to Arkansas common points:

Furniture and chairs, carloads.

Commodity.	Rate per 100 pounds.	Basis.
Furniture carloads:	<i>Cents.</i>	
Grand Rapids to Chicago.....	21½	Commodity third class. Class A differential.
Chicago to East St. Louis.....	9	
Grand Rapids to East St. Louis.....	30½	
Detroit to Chicago.....	23½	Commodity third class. Class A differential.
Chicago to East St. Louis.....	9	
Detroit to East St. Louis.....	32½	
Chicago to East St. Louis.....	9	Do.
Cincinnati to East St. Louis.....	9	Do.
Louisville to East St. Louis.....	4	Do.
Indianapolis to East St. Louis.....	32	Second class.
Chairs (cane, wood, or veneer seat), carloads:		
Grand Rapids to Chicago.....	27	Commodity second class. Class B differential.
Chicago to East St. Louis.....	8	
Grand Rapids to East St. Louis.....	35	
Detroit to Chicago.....	32	Commodity second class. Class B differential.
Chicago to East St. Louis.....	8	
Detroit to East St. Louis.....	40	
Chicago to East St. Louis.....	8	Do.
Cincinnati to East St. Louis.....	8	Do.
Louisville to East St. Louis.....	3	Do.
Indianapolis to East St. Louis.....	55½	No carload rating; 1½ any quantity.

The present rates on these commodities between the same points, together with the rates on woodenware and vehicles from Chicago, Cincinnati, Louisville, and Indianapolis to East St. Louis, are as follows:

Furniture, chairs, woodenware, and vehicles, carloads.

Commodity.	Rate per 100 pounds.	Basis.
Furniture, carloads:	<i>Cents.</i>	
Grand Rapids to Chicago.....	21½	Commodity third class. Class A differential.
Chicago to East St. Louis.....	9	
Grand Rapids to East St. Louis.....	30½	
Detroit to Chicago.....	23½	Commodity third class. Class A differential.
Chicago to East St. Louis.....	9	
Detroit to East St. Louis.....	32½	
Chicago to East St. Louis.....	9	Do.
Cincinnati to East St. Louis.....	9	Do.
Louisville to East St. Louis.....	4	Do.
Indianapolis to East St. Louis.....	32½	Second class.
Chairs (cane, wood, or veneer seat), carloads:		
Grand Rapids to Chicago.....	27	Commodity second class. Class A differential.
Chicago to East St. Louis.....	9	
Grand Rapids to East St. Louis.....	36	
Detroit to Chicago.....	32	Commodity second class. Class A differential.
Chicago to East St. Louis.....	9	
Detroit to East St. Louis.....	41	
Chicago to East St. Louis.....	9	Do.
Cincinnati to East St. Louis.....	9	Do.
Louisville to East St. Louis.....	4	Do.
Indianapolis to East St. Louis.....	32½	Second class.
Woodenware, carloads:		
Chicago to East St. Louis.....	10	Fourth class differential.
Cincinnati to East St. Louis.....	10	Do.
Louisville to East St. Louis.....	5	Do.
Indianapolis to East St. Louis.....	16½	Fourth class local rate.
Vehicles, carloads:		
Chicago to East St. Louis.....	9	Class A differential.
Cincinnati to East St. Louis.....	9	Do.
Louisville to East St. Louis.....	4	Do.
Indianapolis to East St. Louis.....	16½	Fourth class (proportional).

Formerly Indianapolis enjoyed the same differentials as Chicago on all classes as well as commodities, except as above shown, but since the filing of the complaint certain of the differentials from Cincinnati territory, including Indianapolis, have been advanced, and from Indianapolis the application of the differential bases for constructing the through rate on certain commodities has been discontinued, resulting in the charging of the sum of the locals based on East St. Louis.

While the carriers do accord on Indianapolis traffic generally the same rates to Arkansas as are in effect from Chicago, witnesses on behalf of defendants testified that the several commodities referred to in the petition have been excepted from the application of the Chicago basis for the reason that the joint lines participating in this traffic from Indianapolis do not consider it attractive business at the

Chicago rates, especially in comparison with rates applying from Indianapolis in other directions. For example, the rate on furniture from Chicago to Little Rock is 49 cents per 100 pounds. The Central Freight Association scale provides a rate of \$1.01 per 100 pounds on second class (which would apply on furniture in that territory) for a similar distance to that between Indianapolis and Little Rock, so that the application of the Chicago rate from Indianapolis would be a reduction from the standard basis prevailing in Central Freight Association territory of over 50 per cent, making the rate of 49 cents per 100 pounds applicable to a two-line haul of about 591 miles.

The adjustment now in force has remained substantially as at present during a long period of years, and the carriers contend that any change in the Indianapolis rates would ultimately bring down the entire fabric of rates from Central Freight Association territory or else disturb the parity which now exists between Indianapolis and other points in that territory. It is also strongly urged that enterprises located at Indianapolis show a steady growth and material prosperity, the capacity of several having been recently increased.

We are of the opinion that rates on the several commodities referred to in this complaint should be the same from Indianapolis as those applying from Cincinnati to Arkansas common points. Indianapolis is a shorter average distance than Cincinnati, and traffic from the latter place in many cases passes directly through Indianapolis, which is ordinarily accorded the same rates. No sufficient reason appears for excepting Indianapolis from the application of Cincinnati-group rates in the instances above cited.

LOUISIANA.

The differential bases from Chicago, Indianapolis, and Cincinnati are the same to points in Louisiana along the line of the Texas & Pacific Railway and also the Louisiana Railway & Navigation Company from Shreveport to Alexandria, thence east to the Mississippi River and south as far as Cheneyville; along the line of the Kansas City Southern from Shreveport to Lake Charles and the Louisiana & Arkansas Railway running north and south and crossing the Vicksburg, Shreveport & Pacific.

To other points located in the same part of Louisiana but not along the lines above mentioned, and also to points located on the Texas & Pacific and Southern Pacific roads to the south and east of the territory above described, lower differentials apply from Cincinnati than from Indianapolis.

To all this territory the distances are much less from Indianapolis than from Chicago and Cincinnati, e. g., the short-line distance from Indianapolis to Monroe is 686 miles, as against 755 from Cincinnati and 775 from Chicago; Indianapolis to Shreveport 731 miles, from

Cincinnati 802, and from Chicago 810; Indianapolis to Alexandria 784 miles, from Cincinnati 853, and from Chicago 873; Indianapolis to La Fayette, 869 miles, from Cincinnati 938, and from Chicago 958; Indianapolis to Lake Charles 884 miles, from Cincinnati 953, and from Chicago 973.

The following table shows the comparative differentials used as bases for the construction of through rates from Chicago, Indianapolis, Cincinnati, and other points mentioned to group points in Louisiana:

Differentials over St. Louis, in cents per 100 pounds.

To—	From—	Class.									
		1.	2.	3.	4	5.	A.	B.	C.	D.	E.
Lake Charles, La.....	Chicago.....	20	16	12	10	7	9	8	7	6	5
West Lake, La.....											
Joint track stations east of Alexandria to Cheneyville, La., inclusive.											
Natchitoches, La.....											
Texas & Pacific stations west of Alexandria to state line and north of Shreveport to state line.											
Louisiana Ry. & Navigation Co.....											
Louisiana & Arkansas Ry. stations except Chestnut and Winfield, La.											
Kansas City Southern Ry. stations....											
St. Louis, Watkins & Gulf Ry. stations south of Alexandria to Lake Charles, La., inclusive.											
St. Louis, Iron Mountain & Southern Ry. stations, Neimeyer to Tloga, La., inclusive.											
Shreveport, La.....	Cincinnati.....	20	16	12	10	7	9	8	7	6	5
Bossier City, La.....											
Valley Junction, La.....											
Monroe, La.....											
West Monroe, La.....											
Alexandria, La.....											
Boyce, La.....											
Pineville, La.....											
Heard, La.....											
Chestnut, La.....											
Winfield.....	Chicago.....	20	16	12	10	7	9	8	7	6	5
Stations on V., S. & P. Ry., Louisiana & N. W. Ry.	Chicago.....	20	16	12	10	7	9	8	7	6	5
Arkansas Southern Ry.....											
S. A. & S. W. Ry. (Lake Bistenau division).											
T. & G. Ry.....											
C., R. I. & P. Ry. (Louisiana Div.)....											
M. L. & T. Ry. stations, Louisiana western stations, Texas & Pacific Ry. stations.											
East of Cheneyville to Grosse Tete, inclusive.											
	Cincinnati.....	8	8	6	4	4	3	2	2	2	2
	Louisville.....	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)
	Jeffersonville.....	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)
	New Albany.....	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)

* Same as St. Louis; no differential.

On the north of this Louisiana territory lie the Arkansas common points and on the west is the Texas common point territory, to which Indianapolis has the same differentials as have Chicago and Cincinnati. To the lower Mississippi River points, such as Vicksburg, Natchez, Baton Rouge, and New Orleans, the Indianapolis through

rates are the same as the rates from Cincinnati. It will thus be seen that to territory lying on three sides of the Louisiana territory above described and to many interior points in Louisiana the same rates apply from Indianapolis and Cincinnati.

It is contended by defendants that the influence of the Texas rates is felt in the establishment of rates to points in Oklahoma, Arkansas, and Louisiana. Basic rates for the entire territory embraced within the four states above mentioned are made primarily from St. Louis to Texas common points. The Chicago rates are then made fixed differentials over the rates from St. Louis, and these differentials apply generally from so-called Chicago-Cincinnati territory.

Defendants' claim that the application of the Chicago differentials from intermediate territory to Texas common points was induced by a misapprehension as to the fourth section, or so-called long-and-short-haul clause, of the act, in that, notwithstanding the fact that the route from Chicago to Texas common points via the P., C., C. & St. L., running through Logansport, Hartford City, Richmond, Ind., and Hamilton, Ohio, to Cincinnati, thence via several lines to New Orleans, and thence into the state of Texas, is very circuitous and handles but a small portion of the total tonnage moving from Chicago to Texas points, it has been the practice of the carriers for many years to apply the Chicago rates from intermediate territory lying on and west of the line described and east of the Indiana-Illinois state line, including Indianapolis.

As stated, the basis for constructing through rates from Chicago and Cincinnati into southwest Texas and the other territory involved is primarily the rate from St. Louis, with an added differential from the points of origin. It is contended by complainant that such differential basis could not properly be accorded from Chicago without at the same time being accorded to other points located in the same general territory, so that the carriers found it necessary to apply the same differentials from Cincinnati, which is practically the same distance as Chicago from Texas points, and through which several through lines operate from Chicago leading into Texas. Similarly, it was necessary to establish the differential basis from points in Indiana, such as Indianapolis, located along the direct lines between Chicago and Cincinnati and from which the average distance to Texas points is less than from either of the last two points mentioned.

The rates from Cincinnati to Shreveport are slightly lower than those from Indianapolis, and to territory in eastern Louisiana the differences in favor of Cincinnati enlarge as the Mississippi River is approached. This, defendants assert, is due to the fact that rates from Cincinnati are affected by the competition of the Mississippi River to territory in Louisiana contiguous thereto, whereas such competition does not exist from Indianapolis.

In answer to this contention complainants point to the fact that for many years the same rates have been voluntarily applied from Indianapolis and Cincinnati to points such as Memphis, Vicksburg, Natchez, Baton Rouge, and New Orleans, located directly on the Mississippi, and argue from this that since water competition has not affected the relative adjustment as between Cincinnati and Indianapolis to these points, the lower rates from Cincinnati to interior Louisiana points can not be ascribed to this cause.

In the opinion of the Commission rates from Indianapolis to points in Louisiana should not exceed those contemporaneously in effect from Cincinnati. These points ordinarily take identical rates to many groups of points in that State and we see no reason why Indianapolis should be excepted from such application to any destination in Louisiana.

In view of the scope of this case and the necessary time which must be allowed to permit the carriers to check in rates and file tariffs in accordance with the views expressed herein, we will make no definite order at this time. These matters will be held in abeyance until June 28, 1909, for this purpose. If by that date the carriers have not filed tariffs containing the changes suggested, we will then make such order as may appear necessary in the premises.

No. 1046.
INDIANAPOLIS FREIGHT BUREAU
v.
**CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAIL-
WAY COMPANY ET AL.**

Submitted May 1, 1908. Decided May 3, 1909.

1. Complainant alleges unjust discrimination against Indianapolis and undue preference in favor of St. Louis in the application of class and commodity rates to points in Wisconsin, Minnesota, and Michigan, particularly St. Paul and Winona, Minn.; *Held*, That an order as prayed for in relation to the class rates from Indianapolis to St. Paul and Winona is not warranted in view of the peculiar conditions under which traffic is handled and rates constructed from Indianapolis and the competing cities of St. Louis and Chicago to St. Paul and Winona territory. Chicago not only has the advantage of more intense railroad competition, but is a much shorter distance and enjoys natural advantages of location over Indianapolis in reaching St. Paul and Winona. Likewise St. Louis, while but little nearer than Indianapolis by short line, reaches St. Paul and Winona by direct routes, which must compete not only with each other, but also with boat lines plying on the Mississippi River.
2. While the class rates from Indianapolis to St. Paul are approximately 30 per cent in excess of those from St. Louis, on many commodities the disparities between the rates from these respective points of origin are much greater. These greater disparities as between commodity rates from these two points of origin are not warranted, and the Commission is of the opinion that the same should not be greater ordinarily than those appearing in the class rates to St. Paul and group points, and also to Winona and group territory from Indianapolis and St. Louis, respectively. The case is retained with the expectation that the carriers will promptly readjust commodity rates in accordance with this suggestion.

Edward E. Gates and *W. A. Ketcham* for complainant.

O. E. Butterfield for Cleveland, Cincinnati, Chicago & St. Louis Railway Company; Lake Erie & Western Railroad Company, and Lake Shore & Michigan Southern Railway Company.

John G. Williams for Pittsburg, Cincinnati, Chicago & St. Louis Railway Company; Vandalia Railroad Company, and Toledo, Peoria & Western Railway Company.

George W. Kretzinger for Chicago, Indianapolis & Louisville Railway Company; Chicago Great Western Railway Company;

Cincinnati, Hamilton & Dayton Railway Company, and Judson Harmon, receiver thereof.

J. E. Kepperley for Illinois Central Railroad Company.

Hale Holden for Chicago, Burlington & Quincy Railroad Company.

John E. Hollett for Commercial Club of the City of Indianapolis, intervener.

C. C. Hanch for Manufacturers' Association of Indianapolis, intervener.

H. C. Atkins for Board of Trade of Indianapolis, intervener.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

This complaint is, first, that defendants exact unreasonable and unjust class and commodity rates from Indianapolis, Ind., to points in Wisconsin, Minnesota, and Michigan, particularly St. Paul and Winona, Minn., and points in group territory taking same rates; second, that the application by defendants of the same rates from Indianapolis to Winona group territory as to St. Paul group territory, while they apply from Cincinnati, Springfield, Columbus, and Cleveland, Ohio, Louisville, Ky., and Evansville, Ind., to Winona and group territory certain differentials under the St. Paul group rates, subjects Indianapolis shippers to undue and unreasonable prejudice and disadvantage; third, that Indianapolis shippers, being competitors in St. Paul and Winona group territories with shippers from St. Louis, a more distant point, the existing adjustment of rates to said territory as between Indianapolis and St. Louis results in unjust discrimination against shippers from Indianapolis and undue preference to those from St. Louis; and, fourth, that the application by defendants of through commodity rates on certain articles from St. Louis to St. Paul and Winona group territories, while on similar shipments from Indianapolis to the same points of destination higher class rates are applied, is unjustly discriminatory against Indianapolis shippers.

At the time complaint was filed the class rates in cents per 100 pounds, applying under the Official Classification, from Indianapolis to St. Paul and Winona group territories were—

Class....	1	2	3	4	5	6
Rate....	81	69	51	35	29	23½

From St. Louis to St. Paul group points the class rates, subject to the Western Classification, are—

Class....	1	2	3	4	5	A	B	C	D	E
Rate....	63	52½	42	26	21	26	21	18	15	13

and from St. Louis to Winona group points—

Class....	1	2	3	4	5	A	B	C	D	E
Rate	50	42	33	23	18	23	18	15	12	11

That feature of the complaint relating to the application of identical rates from Indianapolis to both Winona and St. Paul group points has been satisfied, the defendants, since the filing of the petition, having published class rates from Indianapolis to the Winona group certain differentials under the rates to St. Paul group points in conformity with the adjustment of the rates applying from Cincinnati, Springfield, Columbus, and Cleveland, Ohio, Louisville, Ky., and Evansville, Ind., to the same territories, so that at the present time the rates from Indianapolis to Winona group points are—

Class....	1	2	3	4	5	6
Rate	76	65	48	32	26	21½

St. Louis takes 105 per cent of the Chicago-St. Paul rates, but from St. Louis and Chicago to Winona the same rates apply. Complainant claims that Indianapolis should take 115 per cent of the Chicago rates to St. Paul and Winona group points. Under this adjustment the first class rate from Indianapolis to St. Paul would be 69 cents as against the Chicago rate of 60 and the St. Louis rate of 63, and from Indianapolis to Winona 57½ as against 50 cents per 100 pounds from both Chicago and St. Louis.

The distance from Indianapolis to Chicago is 183 miles; from Chicago to St. Paul 409 miles by short line, and from St. Louis 584. For the 592-mile haul, Indianapolis to St. Paul, the first class rate of 81 cents yields revenue per ton per mile of 2.74 cents; for the 409-mile haul from Chicago, the 60-cent rate yields 2.93 cents, and for the 584-mile haul from St. Louis the 63-cent rate yields 2.16 cents. Out of the 81-cent rate from Indianapolis the lines up to Chicago receive 34 per cent, or 27½ cents per 100 pounds for the haul of 183 miles, and the lines beyond Chicago 53½ cents, or 66 per cent. On a strict mileage basis the lines beyond Chicago would receive about 48 cents out of the proposed through rate of 69 cents from Indianapolis, leaving 21 cents for the lines performing the haul between Indianapolis and Chicago. The local rate to Chicago is 31½ cents and the sum of the locals to St. Paul is 91½ cents.

The first class rate from Cincinnati to St. Paul is 91 cents and from Pittsburg 95 cents.

The St. Louis-St. Paul rates apply from Illinois territory intermediate between East St. Louis and Altamont, on the Vandalia road, thence north via the Chicago & Eastern Illinois (hereinafter designated as the "C. & E. I.") to Sullivan, thence to Danville, and northwardly to and including Hoopeston; also from the territory

lying east of Altamont, Sullivan, and Danville to the Indiana-Illinois state line; from stations on the Cleveland, Cincinnati, Chicago & St. Louis Railroad (hereinafter designated as the "Big Four" road), East St. Louis to Windsor, inclusive, and from Vandalia stations, East St. Louis to Vandalia, inclusive.

The C. & E. I. applies the St. Louis rates from Danville to St. Paul and Minneapolis because Danville is intermediate via its rails between St. Louis and Chicago. The Big Four also has a line extending from Indianapolis to Peoria through Danville, and competes with the C. & E. I. from that place, so that it was necessary for the Big Four to publish rates from Danville on the St. Louis basis. This condition affects rates from points on the St. Louis Division of the Big Four (extending from East St. Louis to Indianapolis) as far east as Windsor, which is the crossing of the Wabash, and also from points on the Peoria Division (extending from Peoria to Indianapolis) as far east as Danville; also the Chicago Division (extending from Indianapolis to Chicago) as far east as Sheldon, Ill. From territory on the western portion of the Peoria Division (extending from Peoria to Indianapolis) Chicago rates are applied; also between Kankakee and Seneca at junction points where competitive rates are to be met.

The St. Louis Division of the Big Four is north of the Vandalia at Windsor and the St. Louis-St. Paul rate applies on the Vandalia as far east as Effingham. The Wabash connects with the Vandalia at Altamont, 15 miles west of Effingham. The Illinois Central connects with the Vandalia at Effingham. Thus the application of the St. Louis rate from Effingham is brought about by reason of the fact that the Vandalia, in connection with the Illinois Central, has a route from St. Louis to Chicago via Effingham.

From territory east of Windsor, on the Big Four in Illinois, and on the Cairo Division of the Big Four (extending from Danville to Cairo), a somewhat higher basis of rates to St. Paul and Minneapolis applies than from St. Louis rate points. The Illinois Central is the principal competing line in this territory. In order, therefore, for the Big Four to participate in this traffic from southern and southeastern Illinois territory, it is necessary to publish relative rates with those established by the Illinois Central.

Defendants contend that lower through rates from eastern Illinois than from western Indiana territory are likewise forced by competitive conditions. The C., B. & Q. operates a through line from St. Louis to St. Paul, and is therefore in a position to establish lower rates than its competitors which operate by indirect routes and which must divide the through rate with their connections. Thus, the Illinois Central; Chicago & Alton; Wabash, and Chicago, Peoria &

St. Louis are forced to meet the rate established by the C., B. & Q. from St. Louis to St. Paul and must accord a relative basis to intermediate points. The boundary line made by the easternmost road engaging in this traffic prescribes the territory taking the St. Louis rates. Thus, the C. & E. I., operating between southwestern Missouri River territory and Chicago via St. Louis, has forced down the rates from intermediate stations in eastern Illinois. There are four roads leading from St. Louis to Chicago and embracing the territory between the Chicago & Alton on the west in Illinois and the C. & E. I. on the east. All of this intermediate territory traversed by many branches connecting with their main lines between Chicago and St. Louis must necessarily be accorded rates relatively adjusted with respect to those applying from St. Louis and Chicago. This condition does not prevail in the Indiana territory.

It is therefore contended by the carriers that the key to this whole situation is the alleged abnormally low rates from St. Louis and the low rates into the St. Paul territory via the Great Lakes. If the St. Louis-St. Paul rate were raised it would necessarily result in diverting the traffic to the river and a falling off of the business moving from St. Louis to St. Paul. It would also divert it from the all-rail route to the steamer lines operating on the lakes from Chicago.

The distance via western lines between St. Louis and St. Paul is shorter than via Chicago, so that the lines operating through eastern Illinois from St. Louis are competing with the shorter lines west of the river. For example, the short line mileage from St. Louis to St. Paul is 584 miles via the Chicago, Burlington and Quincy (hereinafter designated as the "C., B. & Q."), whereas via the Big Four route and Chicago the distance is 680 miles. The short-line distance from Indianapolis to St. Paul is 592 miles.

The competition of the Mississippi River, which is navigable during seven months of the year, also affects the St. Louis rate. The first class rate of the Diamond Joe line, operating between St. Louis and St. Paul on the Mississippi River is 40 cents per 100 pounds and the rates generally published by this line are two-thirds of the rail rate. This line operates through boats, which make the trip from St. Louis to St. Paul in four days, and it handles a considerable volume of the traffic. There has, however, been no keen competition in late years between the C., B. & Q. and the Diamond Joe line, because of an agreement entered into between them looking to participation in through traffic upon an agreed schedule of rates. Under this arrangement the boat line hauls freight up to the first junction with one of the carriers operating to St. Paul, receiving a certain proportion of the through rate. The rail carrier has no interest in the traffic handled through via the all-water route.

Another factor to be considered in the making of rates from Chicago and St. Louis to St. Paul is the competition afforded by the lake lines from Chicago. Also the market competition afforded by jobbing centers, such as Duluth, which have the benefit of low rates by the lake steamers. Unless St. Paul and Minneapolis were placed on a parity with Duluth, the tendency would be to constitute that place the jobbing center for the entire territory.

The first class rate New York to Indianapolis is 70 cents and Indianapolis to St. Paul, 81 cents. From New York to St. Louis the rate is 88 cents; St. Louis to St. Paul, 63 cents, or a total of \$1.51 via both Indianapolis and St. Louis.

Rates from St. Louis to St. Paul are fixed on a competitive basis to meet rates from the Atlantic seaboard by the rail-and-water and all-rail routes. The first class all-rail rate New York to St. Paul is \$1.15 per 100 pounds, established by the Soo line and Canadian Pacific. The division of this rate accruing to lines performing the haul from Chicago to St. Paul is 40 cents. The eastern lines receive their local New York-Chicago rate from New York to Chicago on this through traffic. It is therefore more profitable for the western lines to handle traffic at the first class rate of 63 cents from St. Louis to St. Paul and at the 60-cent rate from Chicago than to participate in the transportation from the Atlantic seaboard.

It appears, however, that the Chicago rate applies from Springfield, Ill., to St. Paul, out of which the lines north of Chicago receive 65 and the lines south 35 per cent, so that the lines performing the haul from Chicago to St. Paul do not receive as much net revenue from this traffic as from the Atlantic seaboard traffic. Defendants claim that the division of this rate on the basis of 39 cents to the lines beyond Chicago is in accordance with the general arrangement for divisions and interchange of business between the C., B. and Q. and the Chicago & Alton, and that the same condition does not prevail so as to bring about the acceptance beyond Chicago by the C., B. & Q. of the same divisions on traffic originating at Indianapolis and moved to Chicago via the Big Four.

The Illinois Central, Chicago & Alton, and the Wabash lead from Springfield to Chicago. The Big Four, Pennsylvania, and the Monon run from Indianapolis to Chicago.

There are no lines running from Indianapolis to Chicago and beyond via their own rails to St. Paul and Winona. The Illinois Central operates from Indianapolis to Winona group territory in connection with the Indianapolis Southern to Effingham. The C., B. & Q. is the only line which operates from Chicago, St. Louis, and Peoria to St. Paul. There are several through lines operating via their own rails from Chicago and St. Louis, respectively, to St. Paul and Winona.

We are of the opinion that an order such as is prayed for in relation to the class rates from Indianapolis to St. Paul is not warranted, in view of the peculiar conditions under which traffic is handled and rates constructed from Indianapolis and the competing cities of St. Louis and Chicago to St. Paul and Winona territory. Chicago not only has the advantage of more intense railroad competition, but is a much shorter distance and enjoys natural advantages of location over Indianapolis in reaching St. Paul and Winona.

Likewise St. Louis, while but little nearer than Indianapolis by short line, reaches St. Paul and Winona by direct through routes which must compete not only with each other, but also with boat lines plying on the Mississippi River.

Neither are we convinced that these class rates are unreasonable in and of themselves.

The commodity rates specifically challenged in the petition as being unjustly discriminatory against Indianapolis and those which are alleged to give undue preference to St. Louis, together with the current rates, are as follows:

Rates in cents per 100 pounds.

Commodity.	From Indianapolis to—				From St. Louis to—			
	St. Paul.		Winona (class rates).		St. Paul.		Winona (class rates).	
	Apr. 11, 1907.	Feb. 26, 1909.	Apr. 11, 1907.	Feb. 26, 1909.	Apr. 11, 1907.	Feb. 26, 1909.	Apr. 11, 1907.	Feb. 26, 1909.
Clayed bagging.....	25	25	51	48	21	22	21	21
Vehicles.....	34	34	51	32	26	26	18	18
Beer.....	26½	28½	29	26	16	18	16	15
Stoves and furnaces.	25	29	29	26	16	17½	15	16½
Paper, building and roofing.....	19	19	23½	19	10½	10½	10½	10
Glass bottles.....	23½	23½	23½	21½	12½	16	12	15
Iron and steel arti- cles, structural iron.....	22½	24	26	26	13	14½	10	11

The rate on iron from Chicago to St. Paul and Minneapolis is 14 cents per 100 pounds, which was established to enable the manufacturers in Chicago and vicinity to compete in those markets with Pittsburg territory having the benefit of low lake-and-rail rates. As a rule, the same concerns manufacture iron in both Pittsburg and Chicago, and unless Chicago rates are fixed on a competitive basis the demand in the St. Paul territory is met from Pittsburg. About 30 per cent of the total tonnage of iron shipped to St. Paul territory comes from the Atlantic seaboard.

The present rate on structural iron from Indianapolis to St. Paul is 24 cents per 100 pounds; from St. Louis, 14½ cents, and from Chicago, 14. The rate from Pittsburg to Chicago is 18 cents; to St. Louis, 23; to St. Paul, 32, and to Indianapolis, 17. The through class rate

from Pittsburg to St. Paul is 36½ cents per 100 pounds, whereas the combination via Chicago is 32, and this is ordinarily used.

The commodity rate on agricultural implements and wagon wood from St. Louis is 14 cents, as against the class rate of 23½ cents from Indianapolis; on brick from St. Louis, 10½; from Indianapolis, class rate, 23½; barn-door hangers, rails, hinges, and butts, St. Louis, 21, Indianapolis class rate, 29; tar and paving cement, St. Louis, 8½, Indianapolis, asphalt paving cement, 23½; not otherwise specified, 26; wall plaster, St. Louis, 13; Indianapolis, 23½; cotton piece goods, any quantity, St. Louis, 42, Indianapolis, 59; forges, blowers, and drills, St. Louis, 26, Indianapolis class rate, 29; harness, saddlery, and horse collars, St. Louis, 42, Indianapolis, 81; glucose products, St. Louis, 18, Indianapolis, 27½; iron pipe and couplings, St. Louis, 14½, Indianapolis, 29; iron poles, St. Louis, 14½, Indianapolis class rate, 29; knitting factory products, St. Louis, 42, Indianapolis rate, 81; linoleum, St. Louis, 24, Indianapolis class rate, 35; lumber, St. Louis, 14, Indianapolis class rate, 23½; paper, printing, wrapping, wrappers, bags, and cartons, St. Louis, 15, Indianapolis commodity rate, 23½; tissue and toilet paper, St. Louis, 15, Indianapolis class rate, 29; paints, mixed, St. Louis, 20½, Indianapolis commodity rate, 29; pickles, St. Louis, 18, Indianapolis class rate, 29; vinegar, St. Louis, 18, Indianapolis commodity rate, 29; leather, St. Louis, 26, Indianapolis, class rate, 35; harness, leather, L. C. L., St. Louis, 32½, Indianapolis class rate, 69; scrap leather, St. Louis, 18, Indianapolis, 23½; L. C. L., St. Louis, 26, Indianapolis, 51; mineral water and ginger ale, St. Louis, 21, Indianapolis, 29; L. C. L., St. Louis, 42, Indianapolis, 51; packing-house products, St. Louis, 19½, Indianapolis, 29, in bulk, 35; paper carpet lining, St. Louis, 21, Indianapolis, 23½; paper, building and roofing, St. Louis, 10½; Indianapolis, 19.

The commodities in the preceding paragraph are not specifically mentioned in the petition. Since the hearing the rates on many of these articles have been readjusted, the general tendency having been to lessen the disparities between those applied from St. Louis and those applying on the same articles from Indianapolis. The rates are those checked in from tariffs on file with the Commission as of February 26, 1909.

While the class rates from Indianapolis to St. Paul are approximately 30 per cent in excess of those from St. Louis, it will be noted on many commodities the disparities between the rates from these respective points of origin are much greater.

In view of the dissimilarity in conditions under which the transportation service is performed from St. Louis and Chicago on the one hand and Indianapolis on the other, we have not felt justified in condemning the differences in the rates as they now exist on the

various classes. That conclusion was also induced by reason of our having failed to find that the present class rates from Indianapolis to St. Paul are unreasonable. However, on a great number of commodities referred to the rates from Indianapolis do not follow the class-rate adjustment: For example, on brick the Indianapolis rate is 223 per cent of the St. Louis rate; on asphalt paving cement, 277 per cent; on paving cement, not otherwise specified, over 300 per cent; on wall plaster, over 180 per cent; on cotton piece goods, over 145 per cent; on harness, saddlery, and horse collars, over 190 per cent; on iron-pipe couplings and iron poles, 200 per cent; on knitting-factory products, over 190 per cent, etc.

The only rates specifically set out in the petition were those applying on clayed bagging, vehicles, beer, stoves and furnaces, paper (building and roofing), glass bottles, and iron and steel articles, as shown in the table appearing above. The petition contained a general allegation of unreasonableness as to the rates on other commodities, referred to above, and at the hearing testimony was presented with respect to those. We are satisfied that the very much greater disparities between rates on vehicles, beer, stoves and furnaces, building and roofing paper, glass bottles, and iron and steel articles applying from Indianapolis and St. Louis, respectively, than between the class rates hereinbefore mentioned are not warranted; and we are also of the opinion that the disparities shown between the rates as applied from Indianapolis and St. Louis, respectively, on other commodities, referred to at the hearing but not challenged specifically in the petition, are in like manner unwarranted, but we will not, as to these particular commodities, make an order upon a complaint so general in its terms in respect thereto. Since the complainant has proceeded upon the theory that we could do so, and since making an order with reference to the few articles specified would only partially remove the cause of complaint, we think it best to indicate what we believe to be a proper readjustment of the rates and leave the matter for the present to be dealt with by the carriers, with the understanding that the complainant, in the event of the carriers' failure to follow this suggestion, may amend the petition by specifying the other commodity rates as to which it may be desired to make complaint as a basis for further inquiry by the Commission and for such order as may then appear proper. The case will be retained for this purpose, with the expectation that the carriers will promptly readjust these commodity rates, so that the disparities between those on traffic from St. Louis on the one hand and Indianapolis on the other will not be greater ordinarily than those shown in the class rates to St. Paul and group points and also to Winona group territory.

No. 2047.

KAYE & CARTER LUMBER COMPANY

v.

MINNESOTA & INTERNATIONAL RAILWAY COMPANY
ET AL.

No. 2063.

SAME

v.

SAME.

Submitted March 12, 1909. Decided May 10, 1909.

1. A carload rate and a minimum weight for a car of definite dimensions when lawfully published in the tariffs of a carrier constitute an open offer to the shipping public to move their merchandise on those terms; and it would be wholly unsound in principle to permit the carrier to impose additional transportation charges on the shipper who ordered a car of a capacity, length, or dimension specified in its tariffs, simply because it is not provided with cars of the dimensions ordered.
2. The obligation to carry the merchandise of shippers on the basis of the published rates and minimum weights, and to use whatever cars are available for that purpose, ought to have been covered in the published tariffs of the defendants by proper rule to that effect; and their tariffs were unreasonable and unlawful in not containing such a provision at the time these shipments were made. Reparation awarded.

C. A. Kaye for complainant.*H. E. Still* for defendants.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

In the first of these two cases the complainant, a copartnership engaged in the lumber business, ordered a 33-foot car for a shipment of cedar poles from Hines, in the state of Minnesota, to Clearfield, in the state of Iowa. The net weight of the shipment, after deducting the usual allowance of 500 pounds to cover the weight of the car stakes, was 26,820 pounds. The initial carrier, the principal defendant, furnished the complainant with a car which is referred to in the

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pleadings as a 35-foot car, but which a notation on the bill of lading indicates was 33 feet and 6 inches in length. It appears that the car was a gondola coal car and that the latter was the inside length and the former the outside measurement. In the tariffs of the defendant the minimum weight for cars under 34 feet in length, inside measurement, was 24,000 pounds, and for cars of a greater size the minimum was 30,000 pounds. The charges were collected at destination on a weight of 30,000 pounds at the published joint through rate of $24\frac{1}{2}$ cents per 100 pounds. The parties have evidently misunderstood the tariff provisions with respect to the carload minimum or have failed to observe that the inside length of the car used was less than 34 feet. As the case is submitted, the contention of the complainant is that inasmuch as a larger car was furnished for the convenience of the principal defendant and because it was unable to supply a car of the size ordered, the charges ought to have been assessed on the actual weight of the shipment. It therefore demands reparation in the sum of \$7.79, being the difference between the charges collected and the charges that would properly have been collectible had a 33-foot car been furnished as ordered. As a matter of fact, it seems that under the tariffs the same carload minimum weight applied to the car actually furnished as on a car of the size ordered by the complainant. It may be well here to note that the shipment involved in this complaint was made on October 2, 1906, and the charges were paid on October 18 of the same year. The complaint was filed January 19, 1909, but the claim was presented informally to the Commission on September 24, 1908. Under the previous rulings of the Commission the claim is not therefore barred by the statute of limitations.

In the second case the complainant ordered a 33-foot car for a shipment of cedar poles, of the net weight of 25,800 pounds, from the same point of origin to Kingman, in the state of Kansas. The published joint through rate over the route formed by the lines that are defendants to this complaint was $42\frac{1}{2}$ cents per 100 pounds. For a 33-foot car the established minimum weight was 24,000 pounds, and for the 34-foot car, which the principal defendant supplied for the movement, the minimum weight on cedar poles, under the published tariffs, was 30,000 pounds. The freight charges were assessed at destination in the sum of \$127.50—that is to say, on 30,000 pounds, that being 4,200 pounds in excess of the actual weight of the shipment. On the same ground upon which its petition in the first case is based the complainant demands reparation on this shipment in the sum of \$17.85, being the difference between the charges actually collected and the amount of the charges that would have been collectible had the defendants supplied a 33-foot car as ordered.

For such importance as it may have, it should here be stated that this shipment was made on March 26, 1908, at which time the tariffs of the principal defendant contained a rule permitting it, when supplying a shipper with a larger car than he ordered, to assess the charges on the basis of the published minimum weight for the smaller car; but no such rule was at that time incorporated in the tariffs of the other defendants.

The merits are with the complainant in both cases. It is contended on behalf of the defendants that the charges collected on each shipment were based on the requirements of the published tariffs in effect at the time the movements were made, and that the rule now in effect, permitting the defendants, when the state of their car supply requires it, to furnish a larger car than is ordered and to assess the charges on the basis of the published minimum for the smaller car, was not put into their tariffs until some months after the date of the shipments. On this ground the defendants contend that no reparation should be awarded.

A carload rate and a minimum weight for a car of definite dimensions when lawfully published in the tariffs of a carrier constitute an open offer to the shipping public to move their merchandise on those terms; and it would be wholly unsound in principle to permit the carrier to impose additional transportation charges on the shipper who orders a car of a capacity, length, or dimension specified in its tariffs, simply because it is not provided with cars of the dimensions ordered. *Pacific Purchasing Co. v. C. & N. W. Ry. Co.*, 12 I. C. C. Rep., 549, and *General Chemical Co. v. N. & W. Ry. Co.*, 15 I. C. C. Rep., 349. We therefore find that the complainant is entitled to reparation.

The obligation to carry the merchandise of shippers on the basis of the published rates and minimum weights, and to use whatever cars are available for that purpose, ought to have been covered in the published tariffs of the defendants by proper rule to that effect; and their tariffs were unreasonable and unlawful in not containing such a provision at the time these shipments were made. *Beggs v. Wabash R. R. Co.*, 16 I. C. C. Rep., 208.

Let an order be entered awarding the complainant reparation in the amounts demanded in the petitions, with interest.

No. 2039.

AMERICAN BEET SUGAR COMPANY

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY
ET AL.

Submitted March 15, 1909. Decided May 10, 1909.

Charges exacted on a carload of beet sugar shipped in May, 1908, from Las Animas, Colo., to Romero, Tex., found unreasonable and reparation awarded.

Elisha Gee for complainant.

E. B. Peirce for Chicago, Rock Island & Pacific Railway Company and Chicago, Rock Island & Gulf Railway Company.

Robert Dunlap and *T. J. Norton* for Atchison, Topeka & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

The freight charges on 30,225 pounds of beet sugar shipped by the complainant on May 19, 1908, as a carload, from Las Animas, in the state of Colorado, to Romero, in the state of Texas, were exacted at the rate of 97 cents per 100 pounds, which was the sum of the local rates over the route of the movement. There was no through rate from Las Animas, but from Holly, Lamar, and other points of origin in the state of Colorado, to which Las Animas is directly intermediate on the route to Texas destinations, there was an established through rate of 49 cents per 100 pounds. The defendants have subsequently published the 49-cent rate from Las Animas, and the case is submitted on a stipulation of the facts.

Upon the record we find that the charges collected at the rate of 97 cents from Las Animas to Romero were unreasonable and excessive to the extent that they exceeded the rate from adjacent and farther points of origin, and that for the future the rate for the transportation of beet sugar from Las Animas to Romero ought not to exceed the rate from Holly. We find that the complainant is entitled to reparation in the sum of \$145.08, with interest, being the difference between the charges actually collected, amounting to \$293.18, and the amount that would have been collected at a 49-cent rate, \$148.10.

An order will be entered accordingly.

No. 1598.
M. A. HANNA COAL COMPANY
v.
NORTHERN PACIFIC RAILWAY COMPANY ET AL.

Submitted April 3, 1909. Decided May 10, 1909.

Reparation awarded on account of imposition of unreasonable freight charges on 5 carloads of coal shipped from Superior, Wis., to destinations in North and South Dakota, because of carrier's failure to supply cars of the capacity ordered by complainant.

William Collins for complainant.

C. W. Bunn and *C. A. Hart* for Northern Pacific Railway Company.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

During the months of October and November, 1906, the complainant shipped 5 carloads of anthracite coal from Superior, in the state of Wisconsin, to destinations in North and South Dakota. The aggregate weight of the several shipments was 232,000 pounds. Two of the carloads weighed 45,700 pounds each; one weighed 45,500 pounds; one 43,700 pounds, and the car destined to Courtenay, in North Dakota, weighed 51,400 pounds. It appears that for each shipment the complainant had ordered a car of the capacity of 40,000 pounds, such cars, as it is inferred from the record, being sufficient to carry the several shipments; but in each case the Northern Pacific, the initial carrier, furnished a car of the capacity of 60,000 pounds. All the waybills, except the one covering the shipment to Courtenay, bear a notation to the effect that a small car was ordered, but that a large car was furnished for the convenience of the carrier.

As each carload exceeded the minimum weight provided in the tariffs for cars of the capacity of 40,000 pounds, the charges as first collected were assessed on the basis of the actual weight of each shipment; but subsequently, on demand of the defendants, the charges were settled on the basis of 54,000 pounds for each car, that being the minimum weight provided in the tariffs of the defendants for cars of the capacity of 60,000 pounds. Since the shipments moved

a rule has been incorporated in the tariffs of the defendants permitting the assessment of charges on the basis of the car ordered when for the carrier's convenience a larger car is furnished.

Under the authority of *Pacific Purchasing Co. v. C. & N. W. Ry. Co. et al.*, 12 I. C. C. Rep., 549; *General Chemical Co. v. N. & W. Ry. Co. et al.*, 15 I. C. C. Rep., 349; and *Kaye & Carter Lumber Co. v. M. & I. Ry. Co. et al.*, 16 I. C. C. Rep., 285, the complainant is entitled to reparation in the sum of \$63.99, with interest, being the difference between the charges actually paid on the basis of 54,000 pounds for each car and the charges that were properly payable on the actual weight of each shipment.

An order will be entered in accordance herewith.

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No. 1664.
NEWARK MACHINE COMPANY
v.
PITTSBURG, CINCINNATI, CHICAGO & ST. LOUIS
RAILWAY COMPANY ET AL.

Submitted April 15, 1909. Decided May 10, 1909.

Defendants' export commodity rate and minimum weight on clover hullers from Newark, Ohio, to Baltimore, Md., found to be unreasonable when applied to consignments on which the charges would be less if assessed at the higher domestic rate and lower minimum weight. Under the special circumstances of the case no order fixing a rate for the future entered, but reparation awarded for excessive amounts collected on the shipments in question.

J. P. McCune for complainant.

C. B. Fernald for Pittsburg, Cincinnati, Chicago & St. Louis Railway Company.

William Ainsworth Parker for Baltimore & Ohio Railroad Company.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

From its factory at Newark, in the state of Ohio, the complainant shipped during the months of June, July, October, and November, 1908, to Baltimore, Md., for exportation, 15 carloads of agricultural implements known as "clover hullers." The Baltimore & Ohio transported 9 of these carloads, and the other shipments were moved by the Star Union Line over the Pennsylvania system. By both routes there was a commodity rate to the port, applicable on movements for export, of 15½ cents per 100 pounds, with a carload minimum weight of 30,000 pounds. There was no commodity rate between those points on clover hullers for domestic use, but the class rate applying on such movements for domestic use was 19 cents per 100 pounds, with a minimum of 20,000 pounds per 36-foot car and a higher proportionate minimum on larger cars. The carloads in question were each of less than 20,000 pounds in weight, and 6 of them

were loaded on 36-foot cars; the other 9 cars were of larger sizes, upon which the domestic minimum was 22,000 pounds. The freight charges actually collected at the export rate on the 30,000-pound minimum were higher than the charges that would have been collected on the basis of the higher domestic rate on the lower minimum weight, the difference amounting to \$8.50 on each 36-foot car and \$4.70 on each of the larger cars. It is this fact that gives rise to the complaint.

The allegation of the petition is that clover hullers when packed for export shipment require such large boxes that a car can not be loaded to more than 16,000 pounds. But neither the export rate nor the minimum weight prescribed in connection therewith is directly attacked as unreasonable. The complaint merely alleges that it is unreasonable to exact more for an export shipment than for the movement of the same quantity for domestic use. The soundness of this principle is admitted by the defendants, and they have now included in their respective tariffs proper provision for the application of the domestic rate and minimum weight to export shipments when that makes a lower charge than the export rate and minimum. The domestic rate and the export rate are published in one and the same tariff, and the alternative rule therein contained is therefore a proper one.

The facts of the case are stipulated, and the defendants express their willingness to refund to the complainant the excessive amounts collected on the shipments in question. The difference in charges for which we find the complainant is entitled to reparation is \$93.30, to which interest will be added; of this amount \$61.30 is to be paid by the Baltimore & Ohio and \$32 by the Pittsburg, Cincinnati, Chicago & St. Louis Railway Company. We further find that the export commodity rate and minimum weight on clover hullers were and are unreasonable when applied to consignments between the points in question on which the charges would be less if assessed at the higher domestic rate and lower minimum weight. Under the special circumstances of the case we will enter no order fixing a rate for the future.

No. 1585.

J. H. ALLEN & COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.

Submitted March 22, 1909. Decided May 11, 1909.

Defendant's local class rates from St. Paul, Minn., to Missouri River plus its local class rates from Missouri River to Lemmon, S. Dak., and Hettinger, N. Dak., on through shipments from St. Paul to Lemmon and Hettinger were excessive and should not have exceeded the through rates subsequently established. Reparation awarded.

H. G. Allen for complainant.*William Ellis* for defendant.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

This case is submitted by written stipulation of the parties upon petition and answer. The following are the facts:

The complainant, a firm doing business at St. Paul, Minn., shipped on November 19 and 22, 1907, via defendant's road, from St. Paul, Minn., to Samuelson & Co., Lemmon, S. Dak., in 2 cars numerous less-than-carload packages of sundry groceries, and, on the 25th of the same month, in another car, a number of like sundry packages to S. T. Wiprud, Hettinger, N. Dak. The shipments in the 2 cars to Lemmon consisted of 9 articles which were in Class 1; 7 in Class 2; 16 in Class 3; and 21 in Class 4. The packages in the car moving to Hettinger, N. Dak., consisted of 6 articles in Class 1; 7 in Class 2; 11 in Class 3; and 14 in Class 4. The sums of the less-than-carload class rates applicable to the various articles from point of origin to Missouri River and thence to destination were charged and collected by defendant. These rates were as follows:

St. Paul, Minn., to Missouri River:

Class....	1	2	3	4
Rate....	105	90	73	57

Missouri River to Lemmon:

Class....	1	2	3	4
Rate....	62	54	46	41

Making the rate from St. Paul to Lemmon:

Class....	1	2	3	4
Rate....	167	144	119	98

Missouri River to Hettinger:

Class....	1	2	3	4
Rate....	71	61	51	44

Making the rate from St. Paul to Hettinger:

Class....	1	2	3	4
Rate....	176	151	124	101

The sum of the local rates, assessed on the shipments moving in these 3 cars, amounted to \$418.60 for the shipments to Lemmon, and \$160.41 for the shipments to Hettinger, making a total of \$579.01.

Effective November 26, 1907, defendant established through rates per 100 pounds from St. Paul to the destinations in question, as follows:

St. Paul, Minn., to Lemmon:

Class....	1	2	3	4
Rate....	117	100	80	64

St. Paul, Minn., to Hettinger:

Class....	1	2	3	4
Rate....	125	106	87	69

Complainant alleges that the charges exacted were and are unreasonable and unjust in so far as they exceed the through rates subsequently established, as above stated, from St. Paul to the destinations in question, and asks reparation on account of these shipments on that basis.

The defendant in its answer admits the shipments and the collection of charges as stated in complaint, also the subsequent establishment of through rates above shown, and while further admitting that the combination, or the sum of the locals to and from the river was unreasonable and unjust, denies that the Commission has jurisdiction to award reparation, because the rates charged were the only lawfully established rates at the time shipments moved.

The defendant's line had not been extended to the destinations of these shipments long prior to the movement of the same and at that

time it had in force a mileage scale of rates from the Missouri River. The Commission has repeatedly held that where it finds the rate exacted to have been unreasonable it may award reparation by the difference between that rate and that which is reasonable, notwithstanding the former was the rate duly established by the carrier for the time being. We find that the rates charged were unreasonable and should not have exceeded the through rate established by defendant on November 26, 1907, and still in effect. Reparation will, therefore, be ordered in the sum of \$190.74, which is the difference between the charges assessed and paid and those subsequently established.

16 I. C. C. Rep.

No. 2081.

BLUFF CITY OIL COMPANY

v.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY
COMPANY.

Submitted March 13, 1909. Decided May 11, 1909.

For reasons given in the report, reparation is awarded complainant for unreasonable charges on 2 carloads of cotton seed shipped from Kilbourne, La., to Pine Bluff, Ark., on the basis of a subsequent lower rate voluntarily established.

Austin & Danaher for complainant.

C. H. Jackson for defendant.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

This case presents a claim for reparation where the carrier, having collected a class rate under the tariff in force, admits that under all the circumstances such class rate was excessive to the extent that it exceeded a commodity rate thereafter established for similar shipments between the same points.

Until quite recently the defendant had under construction a new line of road between Eudora, Ark., and Gilbert, La. Before any commodity rates had been established the complainant shipped from Kilbourne, La., to Pine Bluff, Ark., one car of cotton seed, weighing 50,000 pounds net, and another car, weighing 51,820 pounds net. The freight was paid on both shipments February 1, 1908, having been assessed under the only tariff applicable, Missouri Pacific No. 5504 (St. Louis, Iron Mountain & Southern), I. C. C. No. 8150, distance tariff, classes and commodities, applying locally between stations in Louisiana and Arkansas on the Iron Mountain route. Kilbourne, La., is 108 miles from Pine Bluff, Ark., and cotton seed being included in Class A, took under said tariff a rate of 40 cents per 100 pounds, which, on these shipments aggregated \$407.28.

Thereafter the defendant voluntarily established, effective January 15, 1908—which date was after the said shipments moved,

16 I. C. C. Rep.

although prior to the payment of the charges—a commodity rate on cotton seed, carload, minimum weight 30,000 pounds, of 12 cents per 100 pounds from Kilbourne to Pine Bluff.

Complainant asks reparation in the amount of the difference between the charges paid and those that the defendant has admitted to be reasonable by tariff publication and by confession at the hearing, or \$285.10.

Our conclusions are that the rate collected was unjust and unreasonable to the extent that it exceeded a rate of 12 cents per 100 pounds; also that complainant is entitled to reparation in the said sum of \$285.10, with interest.

At the hearing the complainant asked leave to amend its petition to include another car of cotton seed shipped from Kilbourne, La., and received at Pine Bluff, Ark., over defendant's line December 10, 1907. On this car no freight has ever been paid, but the carrier demanding the then duly established rate of 40 cents per 100 pounds, and the consignee considering the same excessive replevined the property in court upon giving bond to abide all damages and costs. The parties hereto at the hearing requested that the defendant be permitted to accept in settlement of the matter in controversy in the court proceeding payment by the complainant of charges on the basis of the rate of 12 cents on the last-named shipment. No amendment to the complaint covering this shipment, however, has been filed, and, as stated above, the charges thereon have not yet been paid. This matter, therefore, is not before the Commission in such manner that we can make an order in respect thereto in this case.

An order will be entered in accordance with the conclusions stated.

16 I. C. C. Rep.

No. 2059.

JOSEPH A. GODDARD COMPANY

v.

CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAIL-
WAY COMPANY ET AL.

Submitted March 26, 1909. Decided May 11, 1909.

Reparation awarded complainant for unreasonable rates charged on less-than-carload shipments of metallic cartridges and loaded paper shells from Kings Mills, Ohio, to Muncie, Ind., because of typographical error in tariff sheet which has subsequently been corrected.

G. M. Stephen for complainant.

Ford Woods for Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

This case involves the question of the reasonableness of the rate on metallic cartridges and loaded paper shells on less-than-carload shipments from Kings Mills, Ohio, to Muncie, Ind. On October 5, 1907, the complainant shipped via the lines of the defendants, between the points named, 8 cases of metallic cartridges, weighing 578 pounds, upon which a rate of 33 cents per 100 pounds was assessed and collected. On October 10, 1907, complainant shipped 48 cases of loaded paper shells, weighing 2,790 pounds, over the same route between the same points, and freight charges at the same rate were collected; the total payments on both shipments aggregating \$11.12. The complainant alleged that a rate of 23 cents per 100 pounds on such traffic would be just and reasonable and asked reparation in the sum of \$3.37.

At the hearing the representatives of the Cleveland, Cincinnati, Chicago & St. Louis Railway Company admitted the rates as charged and explained that the rate of 33 cents was a typographical error for 23 cents. Pittsburg, Cincinnati, Chicago & St. Louis tariff, I. C. C. F-880, on page 1, shows Kings Mills, Ohio, as index 144; on page 73 index 6 shows class rates applying to Muncie, Ind., from stations index numbers 136 to 173, as follows: First class, 26 cents; second class, 33 cents; third class, 19½ cents.

Both defendants have admitted their willingness to make the reparation demanded, \$3.37, and by Supplement No. 17 to Pittsburgh, Cincinnati, Chicago & St. Louis tariff, I. C. C. F-880, effective November 2, 1908, they corrected their tariffs, properly establishing the 23-cent second class rate on this traffic in lieu of the said rate of 33 cents. Upon the facts disclosed our conclusions are that the said rate of 33 cents was unjust and unreasonable to the extent that it exceeded 23 cents per 100 pounds, and that complainant is entitled to reparation in the sum of \$3.37, with interest. An order will be entered to this effect.

16 I. C. C. Rep.

No. 1544.

IN THE MATTER OF THROUGH PASSENGER ROUTES
VIA PORTLAND, OREG.

Submitted April 3, 1909. Decided May 4, 1909.

The Northern Pacific Railway Company, the Union Pacific Lines, and the Chicago & Northwestern Railway Company ordered to join in the sale of through passenger tickets between Seattle and other points in the northwest and eastern destinations, via Portland, Oreg., and to accord through facilities, like the checking of baggage, over this route.

A. H. Lossow for the Interstate Commerce Commission.

C. W. Bunn for Northern Pacific Railway Company.

S. A. Lynde for Chicago & Northwestern Railway Company.

N. H. Loomis, P. L. Williams, W. W. Cotton, and F. C. Dillard for Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad & Navigation Company.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

The Northern Pacific Railway Company declines to join in the sale of through tickets between Seattle and other points in the northwest and eastern destinations via Portland, Oreg., and to accord through facilities, like the checking of baggage, over this route, and this leads to much annoyance and has been the source of much complaint. The Commission, being in receipt of complaints from the traveling public, and deeming the subject of sufficient public importance to require investigation, has instituted this proceeding upon its own motion for the purpose of determining the right of the matter and, if necessary, entering an order for the establishment of through routes and joint rates.

The Northern Pacific Railway Company, the Chicago & Northwestern Railway Company, and the Union Pacific lines, namely, the Union Pacific Railroad Company, the Oregon Short Line Railroad Company, and the Oregon Railroad & Navigation Company, were made parties and required to answer. The Northern Pacific justifies its refusal. The answers of the various Union Pacific companies are

in the nature of complaints themselves; they aver that a through route should, for reasons set forth, be opened, and ask that the Commission establish such joint rates.

The parties have furnished certain information called for by the Commission itself, have introduced such testimony as they severally desired, and have presented the case on brief and oral argument.

In this discussion Tacoma will be taken as illustrative of those points in the northwest which are involved. The Northern Pacific Railway extends from St. Paul to Tacoma, and it also operates a line from Seattle through Tacoma to Portland. Numerous lines of railway lead from Chicago to St. Paul.

The Union Pacific lines extend from Omaha to Portland, and various other lines connect Chicago and Omaha.

Hence, a passenger at Chicago can reach Tacoma either via St. Paul and the Northern Pacific or via Omaha and the Union Pacific lines to Portland and from Portland via the Northern Pacific.

The Chicago, Burlington & Quincy Railroad, which is owned and controlled by the Northern Pacific and the Great Northern jointly, runs from Omaha, Kansas City, and other Missouri River points to Billings, Mont., where it connects with the Northern Pacific. The Union Pacific lines extend from Omaha, Kansas City, and other Missouri River points to Portland. Passengers at the Missouri River may therefore travel to Tacoma either via the Burlington route to Billings and thence via the Northern Pacific or via the Union Pacific lines to Portland and thence via the Northern Pacific.

Since practically all passenger traffic between territory east of the Missouri River can and does pass through Chicago and Missouri River points en route for Tacoma, the points above selected fairly illustrate the general situation and the question presented.

When the northern route is used the Northern Pacific may carry the passenger from St. Paul to Tacoma, a distance of 1,900 miles, and must carry him from Billings, a distance of about 1,000 miles, while if the Union Pacific route is selected, the Northern Pacific can only transport the passenger from Portland to Tacoma, a distance of 140 miles. The Northern Pacific declines to make joint rates with the Union Pacific lines, for the reason that to do so would be to encourage the movement of travel through Portland, and thereby to deprive it of the privilege of carrying the passenger by the other route and thus obtaining the long haul.

The act to regulate commerce empowers this Commission to establish a through route and a joint rate in cases like the present, provided no satisfactory through route already exists. The Northern Pacific insists that it already affords a satisfactory through route to

points upon its line north of Portland, and hence that the Commission has no jurisdiction to open the Portland gateway, even though, as a matter of discretion, it might be of the opinion that this ought to be done.

In *Pacific Coast Lumber Mfrs. Asso. v. Northern Pacific Ry. Co.*, 14 I. C. C. Rep., 51, the Commission passed upon an application to open the Portland gateway to the movement of lumber from Tacoma and similar points to eastern destinations over the lines of the Union Pacific and its connections. In that proceeding we held that the Northern Pacific and Great Northern already furnished a satisfactory route to Colorado common points, which are Cheyenne, Denver, Pueblo, and points in that general line north and south, and all territory east, but that there was no satisfactory through route to territory west of Colorado common points, and we established joint rates applicable to that territory to which no satisfactory route was found to exist.

Up to the time that case was decided, and indeed when this proceeding was begun, there was no joint through passenger tariff between the Union Pacific lines and the Northern Pacific through Portland. Since then the Northern Pacific has expressed a willingness to establish joint passenger schedules from Colorado common points and territory west to Tacoma and similar points and such tariffs are now in effect. It still refuses to make joint rates from territory east of Colorado common points. It insists that the same considerations which led us to hold in case of lumber that a satisfactory route already existed by the northern lines to that territory must control our action in the present case.

In the report of that case, at page 59, we said:

Attention should be called to the fact that a wide difference exists between a reasonable through route for the movement of freight and one for passenger traffic. There enters into the passenger service a personal element which does not exist in the case of property. We might well say that a passenger should have the right to journey from Seattle to Omaha via Portland with the conveniences of a through service, although a carload of lumber was not entitled to that privilege.

This was not intended to indicate what would be a satisfactory passenger route, but simply to reserve for consideration that question, which is now for the first time before the Commission in this proceeding.

In order to defeat the jurisdiction of the Commission the existing route must, in the language of the statute, be "reasonable or satisfactory." This, we think, is equivalent to "reasonably satisfactory." The dissatisfaction of the passenger must spring from some reason and not be the product of mere whim.

The first inquiry is, With respect to whom must this route be satisfactory? This same question might arise in case of freight traffic. A route satisfactory to one kind of freight might not be satisfactory with respect to another. Most commodities are indifferent to heat and cold, and it is therefore immaterial whether they are carried through high or low temperatures. Fruits and vegetables may be injured and indeed totally destroyed by freezing or overheating. It might well happen, therefore, that a route entirely satisfactory as to most kinds of freight would not be satisfactory to these perishable articles.

In the case of freight it is possible to distinguish between different commodities and to establish a through route as to one article and not as to another; but with passengers this can not be done, since whatever joint rate is ordered must be open to the general public. It would seem, therefore, that if the existing route is unsatisfactory to any considerable portion of the public desiring to use some route, then it should not be held reasonably satisfactory.

To state this in another way: The caprice or even the proper desire of an occasional passenger should not govern, but if any considerable part of the traveling public reasonably prefer to use some other route rather than the one existing, then the existing route can not be called a reasonable and satisfactory through route. We ought to inquire, therefore, in the present case, whether any substantial part of the entire body of travelers moving between these points in the northwest and eastern destinations does reasonably desire to travel via Portland. If so, this Commission has jurisdiction to open that gateway.

And this is the reasonable conclusion from all the provisions of the act which bear directly or indirectly upon this establishment of through routes and joint rates. Under the original act it was provided that different railroad companies should interchange traffic with one another; but the act contained no provision by which the details of this interchange could be determined, and the courts held that, as at the common law, it was for the carriers to determine for themselves what arrangements for through business should be entered into and upon what terms. The act was finally amended so as to give to the Commission authority to prescribe through routes and joint rates, and to fix the terms and conditions under which these routes should be operated; but the Commission was only authorized to do this where no reasonable or satisfactory route already existed. The plain intent of all these provisions comes to this: The public shall be properly served. So long as it is properly served the carriers may themselves determine upon the means by which the service shall be rendered. The fundamental question in every case is, Are the public necessities, under all the circumstances, fairly met? Such is the

question here. Considering fairly the legitimate desires of those who use these railway lines, ought the facilities of through travel via the Portland gateway to be accorded, or is the present arrangement reasonable and satisfactory?

By what test are we to determine what is reasonable and satisfactory? The Northern Pacific contends that the same considerations which apply in case of freight must also control in case of passengers; that reference can only be had to the incidents of the transportation itself; that if it offers a route by which the passenger can be taken as quickly and with the same physical comfort, then the passenger can not reasonably prefer another route.

The distance from both Chicago and the Missouri River to Tacoma via St. Paul or Billings is somewhat less than via Portland. From Chicago via St. Paul the distance is 2,319 miles, while via Omaha and Portland it is 2,436 miles. From Omaha via Billings the distance is 1,909 miles, via Portland 1,943 miles. The running time from Chicago and the Missouri River is somewhat less via St. Paul and Billings than via Portland. The train service from St. Paul is equally good with that from Omaha. At the present time there is but one through train from the Missouri River via Billings, with a second train involving a change of cars at Billings and a lay over. It was stated upon the hearing that another through train would be put on in the near future and permanently maintained.

On the whole it seems to be true that from the greater part of the territory in question, and we are only considering the matter in its broad aspect, the distance via the northern lines is somewhat shorter and the time somewhat less. The passenger goes in as good a car and is provided with as good a berth and as good a meal. Beyond this the Northern Pacific declares the passenger must not look.

It is evident that, looking entirely to the physical comfort of the passengers, the northern line is not always as satisfactory as the southern. That route traverses a section of country where the cold is much more severe in winter and longer continued. The snows are more frequent and deeper. Interruption of travel from snow blockades and similar causes is much greater. Passengers might find it not only less comfortable, but in some instances even dangerous, to take the journey by this route, although by the southern line it might be undertaken with comfort. Upon the other hand, during the heated period of the summer the northern route may be much cooler and cleaner than the southern.

So, too, looking entirely to the certainty with which one reaches in a given time his journey's end, the southern route may at times present advantages over the northern, which would lead a reasonable man to prefer it. The severe weather during the winter months interrupts to some extent travel upon that line. The period of high

water comes at a different time upon the southern lines than upon the northern. Communication may be more certain at one period of the year by one line and at some other period by the other line. We are considering the character of these routes, not with respect to a single day or a single season, but with respect to the whole year and to a series of years. May it not be well said that the traveling public, even if the test suggested by the Northern Pacific were the correct one, even if the only inquiry was whether the passenger could reach his journey's end with certainty and comfort, are entitled to have these two routes open; and can it be said that the public should be confined at all times to the use of either one?

But these are minor considerations. The real question is that suggested by the Commission in the extract from the *Lumber case*, already given. Is there not a distinction between inanimate freight and human beings? Does not the element of personal preference properly enter into the determination of this question?

Let this situation be clearly understood. If the passenger travels by the Northern Pacific route, he can pass, broadly speaking, through no territory lying west of the Missouri River and south of the main line of the Northern Pacific. If he goes via Portland, he can select any one of a great variety of routes traversing this southern territory as far as Ogden. From Ogden he must go by the Union Pacific lines. The question is, therefore, whether the passenger desiring to go from some eastern point to Tacoma must patronize the northern route or whether he may properly prefer to pass over some one of these southern routes.

A passenger by the Union Pacific route may visit numerous cities which he could not reach via the northern lines, like Denver, Pueblo, Salt Lake City, Ogden. In these cities are many objects of interest which he may desire to behold. He may have friends upon some of these routes whom he wishes to visit, and most of these lines allow liberal stop-over privileges, of which the traveler may avail himself. Shall he be deprived of all this and compelled to travel by a route which may possibly extend the same privileges, but upon which those privileges are to him utterly useless?

The portion of our country which to-day presents the greatest opportunity for the acquisition of new homes and the opening of new enterprises is that traversed by these transcontinental lines. The United States Government is expending vast sums of money for the purpose of bringing into cultivation hundreds of thousands of acres of land. Many home seekers visit the northwest, and inducements are held out to such travelers by all the railways. Shall not the passenger in search of a home have the right to go by whatever one of these various routes he selects?

Some lines present much greater scenic attractions than others, and the scenery differs greatly upon different lines. May not a traveler reasonably select his route with reference to the natural beauties which it offers? May he not properly desire to inform himself of the extent and character of the country of which he is a citizen? Being familiar with one line, may he not reasonably desire to behold the beauties and the business advantages of some other line?

The education and gratification of the sense of the sublime and the beautiful have been recognized in all ages as distinguishing marks of civilization. Governments often provide at the public expense objects of beauty to be gazed upon by the masses. Can it be said that the desire to behold what is attractive in nature is not a desire which the traveler may reasonably indulge? Is this an age so intensely material that the only test of reasonable satisfaction is business necessity and animal comfort?

The United States Government has reserved and set apart a national park, where the citizens of our land may behold the beauties of nature. It has withdrawn from the possible touch of materialism and reserved for the contemplation of present and future ages a portion of our country; and is it to be said that a wish to behold these marvels which have been set apart for the sole purpose of being looked at is not a reasonable wish? May not a traveler reasonably elect that route which will enable him to do this? And if it is reasonable to desire to behold the marvels of Yellowstone Park, is it not equally reasonable to wish to behold the scenic beauties of the Denver & Rio Grande?

It may be profitable to bring this contention of the Northern Pacific to the test of a practical illustration. The Union Pacific lines extend from Ogden to Portland, and they are the only lines by which the traveler, having arrived at Ogden, can reach the city of Portland. From Omaha and Kansas City, as well as from Denver, the Union Pacific maintains a line to Ogden. Passengers on the Missouri River or at Colorado common points desiring to visit Portland can go via the Union Pacific lines, and those lines are the shortest and the quickest and are provided with the best of equipment and service.

It is possible for the traveler leaving Chicago or St. Louis for Portland to go by a great variety of routes to Ogden. He may take the Burlington or the Rock Island or the Missouri Pacific or the Santa Fe. Being arrived at Colorado common points, he may proceed to Ogden via the Denver & Rio Grande or the Colorado Midland, as well as by the Union Pacific.

Now, may the Union Pacific say to the traveling public, "We offer you a line from the east to Portland as short, as quick, as comfortable; therefore you must travel by our route. If you see fit to travel by any other route up to Ogden you must, upon your arrival

there, stop, recheck your baggage, rearrange your Pullman accommodations, purchase a local ticket—in short, go as a local passenger from Ogden to Portland. We will make no through route and no through arrangement with any line which leads from the east to Ogden, because we furnish a satisfactory line of our own which you must patronize.”

No proposition of that sort would be tolerated for a moment; and why? Because it is instinctively recognized that a passenger at some eastern destination may properly select, and should be permitted to select, the route by which he will reach Ogden on his way to Portland.

So of the situation before us. Just as Ogden is a gateway through which streams of travel converging from various directions naturally pour, so does travel from the east to the northwest flow through the city of Portland.

The parties were required to furnish a statement showing the number of passengers who actually do, even at the present time, travel between these northwestern points and eastern destinations via Portland. Those statements cover five years—from 1904 to 1908, inclusive—and show the total number of such passengers to be nearly 40,000, an average of 8,000 persons per year or 22 per day. A good deal of testimony was introduced by the Union Pacific lines to show a desire upon the part of the traveling public to go via Portland, and that testimony does, of itself, conclusively establish the fact; but the most satisfactory proof is the actual record of what daily happens.

We are of the opinion, and find, that a substantial part of those actually making the journey between these points in the northwest and various points in the east to the east of Colorado common points prefer to travel via the lines which lead finally through the Portland gateway. We are of the opinion that the desire of this portion of the public to use those routes is a reasonable one, and therefore that the northern route offered by the Northern Pacific is not, within the contemplation of the statute, and as to such travelers, a reasonable or satisfactory through route.

The statute provides that the Commission may establish through routes and joint rates, but does not require it to do so. There is, therefore, in this case the further question: Ought we, under all the circumstances, to open this Portland gateway?

The first class passenger fare from the territory in question is the same to Portland, Tacoma, and Seattle, and the Pullman fare is also the same to these three destinations. The local fare from Portland to Tacoma over the Northern Pacific is \$4.35, the berth fare \$2, and the seat fare 75 cents. If, therefore, a passenger were compelled to pay the transcontinental fare to Portland and the local fare from

Portland to Tacoma, it would cost him \$4.35 extra without the Pullman accommodation, whereas if the same rate were applied via Portland which obtains via other gateways this extra local fare, both railroad and Pullman, would be saved.

It will hardly be claimed that there is any substantial reason why the 8,000 persons who annually journey through Portland to Tacoma and similar points should be required to bear these additional charges, when the Union Pacific lines stand ready to name the same through rate via Portland and to allow the Northern Pacific its full local. If, therefore, this were the actual situation we should have no hesitation in saying that the through route should be established.

In point of fact the Union Pacific at the present time accords to individuals desiring to reach Tacoma what it terms a "side trip." It sells to the passenger a ticket to Portland, to which is attached a coupon entitling him to a first class ticket from Portland to Tacoma. The Northern Pacific and the Union Pacific occupy a union depot at Portland, and the ticket agent at that station is a joint agent. This coupon must be presented to that joint agent, who delivers to the passenger a Northern Pacific ticket and who pays to the Northern Pacific Company from the Union Pacific Company's funds in his hands the full local fare. Baggage can only be checked to Portland and the passenger is obliged to have this rechecked at Portland.

The testimony shows that agents at the point of origin as a rule inform passengers desiring to purchase tickets via Portland of the method which must be pursued at Portland in obtaining transportation and checking baggage beyond; that in some instances the passenger has declined to go by this route, but that usually, notwithstanding the difficulties, the passenger, while often demurring at the hardship, takes the route which he has selected.

It appeared that very much annoyance and inconvenience was occasioned at Portland. Sometimes it happened that passengers would board the Northern Pacific train without having exchanged the order for a ticket, under the impression that the order was itself a ticket. The greatest difficulty was experienced in the handling of baggage; in many instances the passenger would go on under the impression that his baggage had been checked through. Frequently the baggage had not actually arrived at Portland upon the same train with the passenger. These difficulties were oftenest experienced by those who would suffer most from the annoyance and be less able to rectify the mistake—women and children unattended and persons of little experience in traveling. These mistakes are of daily occurrence and occasion very serious inconvenience.

The legality of the present expedient employed by the Union Pacific to work business through this gateway is extremely doubtful.

The number of passengers who actually take this route is not materially less than it would be if a through route was established. Some few travelers are doubtless deterred by the difficulties of passing through Portland from taking this line, but the testimony fairly shows that this number is insignificant. The present arrangement imposes a great hardship upon the traveling public and results in practically no benefit to the Northern Pacific. If the Northern Pacific has the right to close this gateway, it should be closed, and the public should understand it; if it has not that right, then the gateway should be opened. The present situation produces much irritation, and is of no substantial benefit to the Northern Pacific.

It should also be noted that under the present arrangement, while the passenger receives his train fare from Portland to destination, he is obliged to pay the additional Pullman fare, whereas it was stated upon the hearing that the Pullman Company would sell, if there were a through route, a ticket to Tacoma for the coast price, which would entitle the passenger to space between Portland and Tacoma.

At the present time the passenger at Chicago may travel on a through ticket via St. Paul and the Canadian Pacific lines to Tacoma, in which event the Canadian Pacific carries the passenger to Sumas and the Northern Pacific from Sumas to Tacoma, a distance of about 160 miles. That passenger may also go via St. Paul and the Great Northern, the Northern Pacific securing the transportation from Seattle to Tacoma, a distance of 41 miles.

We feel that the passenger should also have the right to journey upon a through ticket via Portland, in which event the Northern Pacific would obtain a haul of 140 miles.

The right of a railroad to control its traffic by the making of arrangements for through routes and joint rates for the handling of both passenger and freight business is a thing of value to the railway, which should be protected in so far as it can be without infringing upon the right of the public; but these railroads are public servants and it is their first duty to accord to the public proper facilities.

We are in receipt of numerous letters, of petitions from various communities, from boards of trade and other commercial organizations, asking that this gateway be opened. The railroad commission of Oregon has joined its request, all of which indicates that there is a public demand for this route.

This Commission has held that, with respect to freight business, the Northern Pacific and the Great Northern may absolutely control all territory east of and including Colorado common points. It is no hardship to say that, with respect to passenger business, the Northern Pacific must open its lines to this transcontinental travel.

We are of the opinion that the through rates via Portland should be the same as those in effect via the Northern Pacific and its present connections. No opinion is expressed touching the division of these rates. The public interest requires that this gateway shall be opened; but the terms under which that service is rendered should be just as between the carriers themselves. The local fare upon the line of the Northern Pacific is not of necessity the measure of its division. If the carriers do not agree application can be made to the Commission, which must then hear the parties and decide the question.

KNAPP, *Chairman*, dissenting:

The majority report summarizes concisely the law in respect of the establishment of through routes and joint rates in the following language:

The statute provides that the Commission may establish through routes and joint rates, but does not require it to do so.

It follows, then, that before the Commission can lawfully exercise its discretion in this respect, it must find that no reasonable or satisfactory through route exists; and when its jurisdiction is thus established, its discretion must be exercised upon sound considerations of justice to the public and the carriers. In this proceeding I conceive that both the jurisdictional facts and the equitable considerations essential to the lawful and proper exercise of the Commission's authority are altogether lacking.

It appears from the record and is conceded by the majority that from all Missouri River points and territory east thereof the route already established offers to the public as reasonable fares and as comfortable accommodations as would be afforded by the proposed Portland route, and that in distance and time it is somewhat shorter. This being so, the existing route must, in my opinion, be held both reasonable and satisfactory within the meaning of the statute. Certainly the route shortest in time and distance, and equal to any other in the comforts provided for the traveler, can not be called an unreasonable route; and I assume, without arguing the point, that the term "satisfactory" as used in the statute is practically synonymous with "reasonable." Moreover, it seems to me that the majority err in taking into account, to the extent indicated, the incidental desire of the passenger to stop at intermediate points or to travel by a variety of routes. In my judgment, all that can be asked by a person seeking transportation from, say, Chicago to Tacoma is expeditious and comfortable passage between *those two points*. If he desires stop-over privileges or to visit cities which are not upon the reasonable route already established, he is asking an additional service or privilege for which extra compensation may properly be exacted.

The absence of opportunities of this sort, or the lack of attractive scenery, does not make the quickest and otherwise satisfactory route an unreasonable one to be condemned as inadequate by the Commission.

Much stress appears to be laid upon the inconvenience to passengers over the Union Pacific route of rechecking baggage and exchanging tickets at Portland. Even conceding that this is germane to the issue, it seems to me to arise largely because the Union Pacific, in order to secure the long haul to Portland, advertises a through route to Puget Sound which does not in fact exist. Under the present practice of the Union Pacific, the legality of which is not now considered, the passenger to Puget Sound pays no extra fare in order to gratify his desire to travel by that route, and it would seem that the trouble of rechecking baggage and exchanging tickets at Portland is fully compensated by the business convenience of stop-over privileges and other advantages of an incidental or personal nature.

But assuming, though not conceding, that the jurisdictional basis for an order exists, there are controlling reasons, as I think, for declining to take such action. The expensive terminals of the Northern Pacific at Tacoma and Seattle were not provided for local business from Portland, and apparently could not be afforded for that local travel. Those terminals are supported by traffic over the whole system. The order of the Commission in this case in effect places the Union Pacific in substantially the same position as it would be if it had built its own railroad from Portland to Tacoma, some 140 miles. Except in so far as the regulating statute may prevent, carriers are at liberty to take such measures as may be proper to secure and retain traffic upon their own lines. I can not agree to a ruling in this matter which would go far to commit us to the proposition that a company might now build a railroad from, say, Trenton, N. J., to Crown Point, Ind., and successfully demand that the Pennsylvania system be required to join it in through routes east or west between New York and Chicago. Suppose the Northern Pacific ended at Tacoma and the Oregon Railroad and Navigation extended from Portland to Tacoma. Would it be just to require the Northern Pacific to unite with the Oregon Railroad and Navigation in joint rates to Seattle? In the absence of a real public necessity it seems plainly inequitable, by compelling connections and through routing, to take from a carrier traffic for the accommodation of which it has expended millions of dollars and practically turn over that traffic with the use of the carrier's terminals to a competitor which does not see fit to provide for itself the needful railway and terminals.

With reference to the exercise of discretion, it is of course true that the conclusions of the majority in this case will not be con-

trolling in other proceedings, as each case must be judged in the light of its special conditions and circumstances. Nevertheless, the fact that the order made herein, if followed in cases of a similar character, will reverse the common practice of carriers of reserving to themselves the long haul where they can furnish satisfactory accommodations—a practice justified by the business welfare of the carrier, and nowise at variance with its public duty—suggests to my mind that the Commission should not compel through routes and joint rates except upon a disclosure of real and substantial public inconvenience and hardship which could not be otherwise avoided. In my judgment no such disclosure has been made in this case.

I am authorized to say that Commissioner Clark unites in this dissent.

16 I. C. C. Rep.

No. 1922.

STONE-ORDEAN-WELLS COMPANY

v.

NORTHERN PACIFIC RAILWAY COMPANY ET AL.

No. 1923.

SAME

v.

SAME.

Submitted February 5, 1909. Decided May 10, 1909.

Defendants' rates for the transportation of dried fruit in boxes from Fresno, Cal., to Bozeman and Billings, Mont., of \$1.32 and \$1.37½ per 100 pounds, respectively, found unreasonable, and \$1.10 per 100 pounds prescribed as a reasonable rate for the future. Reparation awarded.

Alexander Marshall for complainant.

Charles W. Bunn and *Charles A. Hart* for Northern Pacific Railway Company.

William F. Herrin for Southern Pacific Company.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

The first complaint involves a shipment of a carload of dried fruit in boxes from Fresno, in the state of California, to Bozeman, in the state of Montana. The shipment was made on November 4, 1908, and weighed 48,627 pounds. At destination freight charges were collected upon a combination rate of \$1.32 per 100 pounds, and amounted to the sum of \$641.88. The rate collected was made up of a joint through rate of \$1 per 100 pounds from Fresno to Helena, and a local rate of the Northern Pacific Railway Company of 32 cents per 100 pounds from Helena to Bozeman.

The second complaint involves a carload shipment of dried fruit from Fresno to Billings, in the state of Montana. This shipment was

made on November 2, 1908, and weighed 38,900 pounds. At destination freight charges were collected upon the basis of a combination rate of \$1.37½ per 100 pounds, and amounted to \$534.88. These charges were made up of a local rate of the Southern Pacific Company of 37½ cents from Fresno to Lathrop, a point also in the state of California, and a joint through rate of \$1 per 100 pounds from Lathrop to Billings.

Billings, as is well known, is located at the junction of the Northern Pacific and Chicago, Burlington & Quincy railroad companies. Bozeman is a local point on the Northern Pacific 140 miles west of Billings. Helena and Butte are also on the lines of the Northern Pacific, the former being 98 miles west of Bozeman and the latter about 96 miles. At the time these shipments moved the defendants had in effect on carload shipments of dried fruit in boxes a joint through rate of \$1 per 100 pounds to both points from Fresno, and this is the present rate. There was also in effect at that time a joint through rate of \$1.10 per 100 pounds to Fargo and Wahpeton, in the state of North Dakota, Crookston and Fergus Falls, in the state of Minnesota, and to other points in both states more distant from Fresno than Bozeman and Billings by a substantial mileage. These rates applied not through Billings but via Omaha.

Upon a comparison of the rate of \$1.32 to Bozeman and \$1.37½ to Billings with the rate to Helena and Butte, and the rate of \$1.10 to Fargo, Wahpeton, and other points in North Dakota and Minnesota, the complainant contends that they are unjust and unreasonable. At the hearing the defendants admitted the justice of that view and also that a joint through rate of \$1.10 per 100 pounds on carload shipments of dried fruit in boxes from Fresno to the territory lying east of Helena, up to and including Billings, Bozeman being intermediate, would be a reasonable rate. It appeared also that this rate had been established by a published tariff duly filed with the Commission.

Upon the foregoing facts we find that the rate collected on the 2 carloads in question was excessive and unreasonable and ought not to have exceeded a rate of \$1.10 per 100 pounds, which rate we also find will be a reasonable rate for the future. We further find that in the first of the above-entitled complaints the petitioner is entitled to reparation in the sum of \$106.98 with interest, and in the second complaint to a like amount with interest, these sums being the differences between the charges actually collected on the 2 carloads respectively and the amount of the charges assessable at the rate which we here fix as a reasonable rate for the movements.

An order will be entered in accordance with these views.

No. 2148.

NEW ALBANY BOX & BASKET COMPANY
v.
ILLINOIS CENTRAL RAILROAD COMPANY.

Submitted April 10, 1909. Decided April 13, 1909.

1. Through a confusion in defendant's tariffs there were three conflicting rates on lumber and logs purporting to be in effect at the same time from Dyersburg and other stations in Tennessee, to Louisville, Ky.; *Held*, That the first established rate of 12 cents was the legal rate, but it was unreasonable and ought not to have exceeded the 8½-cent schedule that was subsequently issued. Reparation awarded to complainant in the difference between the 10-cent rate applied on certain shipments and the 8½-cent rate.
2. A rate once lawfully published continues to be the lawful rate until it has been lawfully canceled. A subsequent tariff naming other rates without canceling the previous rates can not carry the new rates into lawful effect; and the silence of a subsequent tariff can not be accepted as a lawful cancellation of rates previously established.

Charles Schwartzel for complainant.

Frank B. Bowes for defendant.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

During the years 1906 and 1907 and the spring of 1908 the complainant, a manufacturing corporation located at New Albany, in the state of Tennessee, shipped over the Illinois Central Railroad from Dyersburg, Henecks, Menglewood, Richwood, and Troy, in the state of Tennessee, 323 carloads of logs consigned to Louisville, in the state of Kentucky. Upon 268 of the carloads the defendant collected freight charges at a rate of 8 cents per 100 pounds from Troy, and a rate of 8½ cents per 100 pounds from the other originating points. It had previously quoted these rates to the shipper. The freight charges on the other 55 carloads, shipped after September 15, 1907, were collected at the rate of 10 cents per 100 pounds.

The legality of these exactions being a matter in dispute between the complainant and the defendant, they have joined in submitting the controversy for decision by the Commission, the defendant on

the one hand contending that it had the warrant of lawful tariff authority for demanding, and ought to have collected, a rate of 10 cents per 100 pounds on all of the shipments; the complainant on the other hand being of the opinion that the charges ought not to have exceeded 8 cents and $8\frac{1}{2}$ cents per 100 pounds. The doubt arises out of a lamentable confusion that existed at the time in question in the lumber tariffs of the defendant. For two or three years its published schedules named three conflicting rates on lumber and logs from various stations on its lines in Tennessee to Louisville. The rates from Dyersburg, Tenn., may be taken as representative:

1. In its tariff schedule issued in December, 1903, the defendant published a rate of 12 cents per 100 pounds on logs as well as on lumber from Dyersburg to Louisville.

2. Without any reference to or cancellation of the above-mentioned schedule another tariff which bore effective date of June 1, 1904, named a rate of 13 cents per 100 pounds on cottonwood and gum lumber, but no rate on logs; in December, 1904, a supplement changed the rate to 10 cents. This tariff and its supplement were superseded in 1905 by a new schedule which named a rate of 10 cents per 100 pounds on cottonwood and gum logs as well as lumber.

3. A third tariff schedule, containing rates on "general merchandise," issued in 1905, named a rate from Dyersburg to Louisville of $8\frac{1}{2}$ cents on logs and a rate of 12 cents on lumber. This schedule contained a note, printed under the heading "Important," which specifically stated that all class and commodity rates in force over the Illinois Central between Louisville and Tennessee stations were canceled except those shown in the special commodity tariffs listed in the note. Among the special commodity tariffs so noted as still in effect were the tariffs mentioned in the two preceding paragraphs.

This conflict in the defendant's tariff rates on logs continued until April 20, 1908, when, by the filing of amendments to all the tariffs herein referred to, a single rate of $8\frac{1}{2}$ cents per 100 pounds on logs was definitely established from Dyersburg to Louisville. The same amendment set up a 10-cent rate on cottonwood and gum lumber and a rate of 12 cents on other lumber.

It would be futile, in view of such a disregard as this record shows of the requirements of law and of the rules of the Commission for the establishment of lawful rates, to endeavor to unravel these schedules for the purpose of arriving at definite conclusions as to the rate to be applied to these particular shipments. One principle must, however, be insisted upon, and that is that a rate once lawfully published continues to be the lawful rate until it has been lawfully canceled. A subsequent tariff naming other rates without canceling the previous

rates can not carry the new rates into lawful effect. The silence of a subsequent tariff with respect to rates lawfully in effect can not be accepted as a lawful cancellation of the previous rates. Nor will vague references in subsequent tariffs as to the cancellation of previous tariffs have that effect. The law and the requirements of the Commission provide a method by which existing rates may be canceled and other rates may be put in effect, and these requirements must be fulfilled in order to give legal effect to a new rate intended to take the place of an existing rate.

If, however, the 12-cent rate on logs that became effective in December, 1903, and seems not to have been legally canceled until April 20, 1908, is to be regarded, as we think it must be, as the legal rate on logs at the time these shipments moved, it nevertheless appears, from the tariffs subsequently filed by it and in which it endeavored to set up lower rates on logs, that the defendant regarded the 12-cent rate as unreasonable on the dates of the subsequent tariffs. In the "general merchandise" tariff of 1905 the defendant undertook to establish the 8½-cent schedule on logs, and this rate it made legally effective in its amendments of April 20, 1908. These tariffs are sufficient evidence not only of the rate that the defendant intended to make effective prior to the date of these shipments, but of its theory of what was a just and reasonable rate at that time.

Under the circumstances of the case we find that the published rates of the defendant on logs were excessive and ought not to have exceeded 8 cents and 8½ cents per 100 pounds, and those rates will be reasonable rates for the future between the points in question. We also find that the charges exacted on some of the shipments at the 10-cent rate were excessive. The total charges actually collected on the 323 carloads were \$13,791.41, and the amount that the charges would have aggregated at the 8-cent and 8½-cent rate is \$13,396.54. The difference is \$394.87, and a refund of that amount will be awarded with interest.

An order will be entered accordingly.

16 I. C. C. Rep.

No. 1943.

HENRY M. GILCHRIST

v.

LAKE ERIE & WESTERN RAILROAD COMPANY ET AL.

Submitted March 22, 1909. Decided May 10, 1909.

Defendants' joint through rate of 74 cents per 100 pounds on a shipment of oil-well supplies and pipe from Fishers, Ind., to Bartlesville, Okla., was an unreasonable rate and should not have exceeded the combination of local rates of 58½ cents per 100 pounds, which last-named rate is found reasonable for the future between the points in question. Reparation awarded on that basis.

Edward Wilson for complainant.

James Hagerman and *Joseph M. Bryson* for Missouri, Kansas & Texas Railway Company.

John B. Cockrum for Lake Erie & Western Railroad Company.

Wilson, Warren & Child for Chicago, Peoria & St. Louis Railway Company.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

This case is submitted to the Commission for hearing and determination upon the facts stated in the pleadings, and in an agreed statement of facts, from which record the following appears:

On the 2d day of November, 1908, complainant made shipment of a carload of oil-well supplies and pipe, weight 49,200 pounds, via the lines of the defendants, from Fishers, Ind., to Bartlesville, Okla., upon which freight charges were collected in the sum of \$367.08, based on the through rate of 74 cents per 100 pounds, which complainant alleges is unjust and unreasonable to the extent that it exceeds the combination rate on St. Louis, Mo., of 58½ cents per 100 pounds.

Complainant asks that the Commission order a through rate that shall not exceed said combination, and that reparation be awarded for the difference between the rate ordered and that charged, as applied to the weight of shipment.

At the time the shipment moved, oil-well supplies, including pipe, in carloads, minimum weight 30,000 pounds, under Western Classification, were rated as Class A. Under F. A. Leland's tariff, I. C. C. No. 513, governed by Western Classification, and in effect at the time of the shipment, the through rate on Class A shipments from Cincinnati territory, which includes Fishers, Ind., to Bartlesville, Okla., was 74 cents per 100 pounds in carloads. The same tariff carried a rate of 45 cents per 100 pounds on Class A shipments in carloads, from St. Louis, Mo., to Bartlesville, Okla. Lake Erie & Western tariff, I. C. C. No. 1620, effective February 1, 1908, governed by Official Classification and in effect on the date of the shipment in question, carried a fifth class rate of $13\frac{1}{2}$ cents per 100 pounds from Fishers, Ind., to St. Louis, Mo. Official Classification rates oil-well supplies in carloads, minimum weight 36,000 pounds, as fifth class, but pipe is not included in this item. The fifth class rate, however, applies on iron pipe in carloads between the same points, and under Rule 10 of Official Classification, articles taking the same rating may be carried in mixed carloads, and the rate applied to the actual weight thereof, if not less than the minimum prescribed for the respective shipments. The same minimum applied to both oil-well supplies and iron pipe.

It is apparent from these facts that the through Class A rate exacted on this shipment was in excess of the combination on St. Louis. In the absence of a showing to the contrary, we find that the rate exacted by the defendants on the shipment covered by the complaint was unjust and unreasonable to the extent that it exceeded said combination of $58\frac{1}{2}$ cents per 100 pounds in carloads, and that a through rate not in excess of said sum would have been, at the time of said shipment, and is now, a just and reasonable rate to apply to shipments of oil-well supplies and pipe moving from Fishers, Ind., to Bartlesville, Okla.

We are also of the opinion that defendants should be required to establish and maintain said through rate for a period of not less than two years from the date of the order entered herein, to be applicable under the present minimum weight regulations.

The Commission further finds that complainant is entitled to reparation from the defendants in the sum of \$79.26, with interest, being the difference between the amount which should have been charged at a rate of $58\frac{1}{2}$ cents per 100 pounds, as applied to the weight of the shipment, and the amount that was actually collected. The amount actually collected at the rate of 74 cents per 100 pounds resulted in an overcharge of \$3.

An order will be entered in accordance with these views.

No. 1980.

AMERICAN AGRICULTURAL CHEMICAL COMPANY

v.

ERIE RAILROAD COMPANY ET AL.

Submitted February 17, 1909. Decided May 10, 1902.

The rates of \$3.23 and \$3.02 per gross ton on imported iron pyrites in carloads from points in New York Harbor to Linndale and Cleveland, Ohio, respectively, were during the time they were in effect unreasonable and unjust, and should not have exceeded \$2.56 per gross ton. Reparation awarded. *Detroit Chemical Works case*, 13 I. C. C. Rep., 363, cited.

C. S. Hillyer for complainant.

H. A. Taylor for Erie Railroad Company and New York, Chicago & St. Louis Railroad Company.

Clyde Brown for Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

J. F. Schaperkotter for Lehigh Valley Railroad Company.

Charles Heebner for Philadelphia & Reading Railway Company.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

On or about January 16, 1907, the complainant unloaded from the steamship *Inca* at Communipaw, N. J., in New York Harbor, 306.09 gross tons of imported iron pyrites, and shipped it as 11 carloads over the lines of the defendants, the Central Railroad of New Jersey, Philadelphia & Reading Railway Company, New York Central & Hudson River Railroad Company, and the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, to Linndale, in the state of Ohio. A freight rate of \$3.23 per gross ton was applied, and charges aggregating \$988.67 were collected.

During the month of April, 1907, the complainant also shipped to Linndale over the lines of the defendants, the Erie Railroad Company, New York, Chicago & St. Louis Railroad Company, and Cleveland, Cincinnati, Chicago & St. Louis Railway Company, 23 carloads

of imported iron pyrites, aggregating 759.8 gross tons in weight, which it had unloaded from the steamship *Twilight* at Weehawken, in New York Harbor. On these carloads the same rate of \$3.23 per gross ton was applied and charges were collected to the total amount of \$2,454.14.

In June of the same year the complainant unloaded 497.90 gross tons of the same commodity from the steamship *Pandosa* at Communipaw, and it was transported in 16 cars to Cleveland, Ohio, over the lines of the defendants, the Lehigh Valley Railroad Company and the Lake Shore & Michigan Southern Railway Company. Freight charges to the amount of \$1,503.70 were collected, at a rate of \$3.02 per gross ton.

The complainant alleges that the rates exacted on the several shipments referred to were unjust and unreasonable to the extent that they exceeded \$2.56 per gross ton, and reparation is prayed for in the difference between the latter rate and the rates charged as applied to the weights of the respective shipments.

The demand for reparation is predicated on the decisions of the Commission in *Detroit Chemical Works v. Northern Central Ry. Co.*, 13 I. C. C. Rep., 357, and *Detroit Chemical Works v. Erie R. R. Co.*, 13 I. C. C. Rep., 363. Those proceedings involve the rates on imported iron pyrites from New York and from Baltimore to Detroit. A few days after the cases were submitted and before a decision was made, the carriers defendant therein, on January 9, 1908, reduced the New York rate to Detroit to \$2.81 per gross ton, and made proportionate reductions in the rates to other points, including Cleveland, to which the rate was lowered from \$3.02 to \$2.56 per gross ton. The Commission found the higher rates to Detroit excessive and ordered the reduced rates to be maintained as maxima for a period of not less than two years from January 10, 1908. No order or finding was made with respect to the rates to Cleveland or Linndale. Linndale is a suburb of and within the switching limits of Cleveland, and the complainant contends that it should take the Cleveland rates.

The defendants have entered into a stipulation with the complainant, in which the allegations of the petition are admitted, and it is agreed that an order may be entered awarding reparation on the shipments in question. The defendants make this offer, however, on the condition that they shall not be required to maintain their present rate of \$2.56 per gross ton, which was established January 10, 1908, for a longer time than until January 10, 1910, the date on which the orders in the previous decision above referred to, fixing the rates to Detroit, will expire.

Upon these facts, and in view of the relationship which has long existed between the rates to Cleveland and to Detroit from New

York, not only upon iron pyrites, but on all classes of freight, we are of the opinion that the rate of \$3.02 per gross ton to Cleveland was an unreasonable rate and ought not to have exceeded the amount of the reduced rate of \$2.56 per gross ton that became effective January 10, 1908. We base this conclusion on our findings in *Detroit Chemical Works v. Erie R. R. Co. et al.*, 13 I. C. C. Rep., 363. We are also of the opinion that Linndale, because of its proximity to Cleveland, ought to take the Cleveland rate on iron pyrites from these points of origin; and we therefore find that the rate of \$3.23 charged on the shipments to Linndale was unjust and unreasonable to the extent that it exceeded the present rate of \$2.56 per gross ton, which we also find will be a reasonable rate for the future. But in view of the relation of the Linndale and Cleveland rates on iron pyrites to the rate to Detroit, we shall not require the defendants to maintain the rate of \$2.56 beyond January 10, 1910, being the date fixed in our order in the case above cited. An order to that effect will be entered and reparation will be awarded to the complainant in the sum of \$943.21, with interest. Of this amount the defendants, the Central Railroad of New Jersey, Philadelphia & Reading, New York Central & Hudson River, and Cleveland, Cincinnati, Chicago & St. Louis railroad companies will be required to pay \$205.08, being the difference between the charges actually collected on the 306.09 gross tons in the 11 carloads shipped from Communipaw to Linndale and the \$783.59 chargeable thereon at the rate of \$2.56. On the 759.8 gross tons shipped as 23 carloads over the Erie; New York, Chicago & St. Louis, and Cleveland, Cincinnati, Chicago & St. Louis railroad companies from Weehawken to Linndale the charges that are assessable at the rate herein found reasonable are \$1,945.09, and the difference between this amount and the \$2,454.14 that was actually collected is \$509.05. The Lehigh Valley and the Lake Shore & Michigan Southern actually collected \$1,503.70 on the 497.90 gross tons in the 16 carloads transported from Communipaw to Cleveland; at the lower rate they should have charged \$1,274.62; the difference between these amounts is \$229.08.

No. 1438.
CHICAGO LUMBER & COAL COMPANY ET AL.
v.
TIOGA SOUTHEASTERN RAILWAY COMPANY ET AL.

Submitted March 12, 1909. Decided May 4, 1909.

1. Complainants manufacture yellow-pine lumber in Arkansas and northern Louisiana and ship it over defendants' lines to markets in Central Freight Association territory. By simultaneous action the defendants established rates of 16 cents per 100 pounds to Cairo from the entire producing territory, resulting in an advance of 2 cents per 100 pounds on lumber originating in complainants' territory, but in other portions of the producing territory the rates remained stationary and there were material reductions in some quarters. Complainants attacked the advance as unreasonable and discriminatory; *Held*, That the rates were not unreasonable *per se* and, under all the circumstances appearing, there is no reason for interfering with the present adjustment.
2. The fact that the advance was the result of conference and understanding between the carriers is entitled to be duly considered in connection with other circumstances and conditions bearing upon the reasonableness of the rates under consideration, but this fact of itself does not of necessity establish the unreasonableness of such rates.
3. Each case must be decided upon its own merits, and the decision in another case against other carriers operating in a different territory under essentially dissimilar circumstances and conditions affords no controlling precedent for the decision of this case.
4. Substantial dissimilarity in transportation conditions found to exist in the producing territories east and west of the Mississippi River.
5. Where competitive conditions among shippers are the leading considerations that induce a complaint, the Commission in determining the reasonableness of rates must have due regard to transportation conditions and the rights of the carriers as well as the interests of shippers.
6. The movement of traffic is encouraged and increased when carriers adjust their charges to meet mercantile interests, but they are not obliged in adjusting their charges to equalize the value of commodities in their final distribution.
7. A carrier is not guilty of discrimination because it does not afford as favorable rates as others serving a different territory, though the products carried by each are brought to the same market.
8. The law does not deal with carriers collectively as a single unit or system, but its commands are directed to each with respect to the service which it is required to perform.

9. The decision of the Commission must be based upon broad principles of justice, keeping in view the welfare of the public as well as the interests of carriers and shippers in the entire territory involved, and under the facts and circumstances of this case it should not be limited to those interests located in a restricted part of the producing territory.
10. Blanket or group rates in many cases, especially with reference to particular commodities, are of great advantage to the public without serious injustice to any interest, though there is of necessity more or less disregard of distance and varying degrees of inequality.

W. E. Caylor, W. G. Wise, F. S. Bright, Goulder, Holding & Masten, T. M. & J. D. Miller, and Green & Green for complainants.

M. L. Clardy and J. C. Jeffery for St. Louis, Iron Mountain & Southern Railway Company, Missouri Pacific Railway Company, St. Louis, Watkins & Gulf Railway Company, and Little Rock & Hot Springs Western Railway Company.

S. H. West and R. F. Britton for St. Louis Southwestern Railway Company.

E. B. Peirce for Chicago, Rock Island & Pacific Railway Company, St. Louis & San Francisco Railroad Company, and Vicksburg, Shreveport & Pacific Railroad Company.

T. J. Gaughan and J. R. Lane for Tap Lines.

Henry Moore and Henry Moore, jr., for Louisiana & Arkansas Railway Company.

S. W. Moore and F. H. Wood for Kansas City Southern Railway Company and Texarkana & Fort Smith Railway Company.

Robert Dunlap and T. J. Norton for Atchison, Topeka & Santa Fe Railway Company.

Alex. G. Cochran for Missouri Pacific Railway Company, St. Louis, Iron Mountain & Southern Railway Company, Chicago, Peoria & St. Louis Railway Company of Illinois, Michigan Central Railway Company, Arkansas Southwestern Railway Company, Little Rock & Hot Springs Western Railway Company, and St. Louis, Watkins & Gulf Railway Company.

S. F. Andrews for Illinois Central Railroad Company, Mobile & Ohio Railroad Company, Alabama & Great Southern Railroad Company, Cincinnati, New Orleans & Texas Pacific Railway Company, Alabama & Vicksburg Railway Company, and Norfolk & Western Railway Company.

Edward C. Kramer for Southern Railway Company.

Hale Holden for Chicago, Burlington & Quincy Railroad Company.

W. S. Wharton for Toledo, Peoria & Western Railway Company.

S. A. Lynde for Chicago & Northwestern Railway Company.

F. C. Dillard for Southern Pacific Company, Houston East & West Texas Railway Company, and Eastern Texas Railroad Company.

REPORT OF THE COMMISSION.

CLEMENTS, Commissioner:

The Chicago Lumber & Coal Company together with numerous other companies, firms, and individuals have brought this complaint against the defendant carrier above stated and many others. In view of the disposition of the case herein made, it is not deemed necessary to enumerate all of the complainants and defendants set forth in the petition.

The complainants manufacture, buy, sell, and ship yellow-pine lumber, their mills being mainly along the lines of the defendant railroads in Arkansas and that part of Louisiana west of the Mississippi River. They also maintain offices and lumber yards at various points in the southern and western states. The products of these mills, are largely shipped north of the Ohio River into Central Freight Association territory and to Western Trunk Line territory, and are transported by the defendant carriers together with their northern connections. In addition to the trunk-line carriers named as defendants, a large number of short-line railroads, extending from their respective junction points with the standard lines to the saw-mills and plants of the complainants, are also made defendants.

In the summer of 1903 some of the trunk-line defendants simultaneously advanced the rates on yellow-pine lumber from 14 cents to 16 cents per 100 pounds in carloads from points in Arkansas and northern Louisiana to Cairo, Ill., and for beyond, and from 16 to 18 cents to St. Louis, Mo., and points basing thereon. This complaint, filed June 28, 1907, alleges that this increase is unjust, unreasonable, and discriminatory, and reparation is sought by all of the complainants for the alleged excessive exactions.

Some of the standard-line defendants operating in the territory covered by the complaint admitted the advance and justified it chiefly upon the ground that the prior rates were not reasonably compensatory; others denied all the averments of the petition, and no answers were filed by the short-line railroads.

There were two yellow-pine rate groups in Arkansas, Louisiana, and Texas on some of the lines on traffic destined to Central Freight Association and Western Trunk Line territory prior to this advance. On such lines the lower-rate group embraced points of origin in Arkansas and northern Louisiana, and the rates therefrom were 14 cents to Cairo and 16 to St. Louis. The higher-rate group included southern Louisiana and all the yellow-pine territory in Texas served by such lines, and their rates from this territory were 16 cents to Cairo and 18 to St. Louis, but these rates were not applied from either territory by all the carriers.

In other words, the rates were not identical on all of the lines. Some of the carriers having different rates for substantially the same service, it resulted, as is claimed by defendants, that the tariffs were incongruous, producing a condition unsatisfactory to both carriers and shippers. The course of the rates on this traffic prior to 1903 on the St. Louis Southwestern Railway is fairly illustrative of the rate adjustments and fluctuations on other lines. From 1891 to 1900 the rates from stations in Arkansas, south of Pine Bluff, and in Louisiana were 13 cents to Cairo and 15 to St. Louis, and from stations in Texas, south of Texarkana to Lufkin, they were to both Cairo and St. Louis 22 cents. In 1900 those from said stations in Arkansas and Louisiana were advanced one cent, making 14 cents to Cairo and 16 to St. Louis. The rates from Texas points had been reduced from 22 to 16 cents to Cairo, and from 22 to 18 cents to St. Louis. In March, 1903, all these rates were advanced 2 cents, but on May 11, following, this advance was withdrawn, leaving the rates as they were prior to March, 1903. These rates continued in effect until August 15, 1903, when the advance of 2 cents of March, 1903, again took effect, and on October 3, 1903, the blanket rate of 16 cents to Cairo and 18 to St. Louis from all points on the line last named, in this whole territory were put into effect.

During this time, as before indicated, other roads were making changes and, finally, by concert of action and by advances in some quarters and reductions in others, all the producing territory west of the Mississippi River, south of Little Rock, Ark., extending to the Gulf of Mexico, including the yellow-pine districts of Texas and Oklahoma, was brought under the "blanket plan" and given the same rates by all carriers from all producing points in said blanket zone on shipments destined to Cairo and St. Louis and points basing thereon, except in some instances where, as from the east side of the river, the rates for shipments to Cairo or St. Louis proper are somewhat higher.

From this blanket-rate adjustment there resulted an increase of 2 cents in the rates to Cairo and St. Louis from the territory described in the complaint as Arkansas and northern Louisiana from points of origin on some of the lines. This advance is the subject of the complaint which puts in issue the reasonableness of the 16-cent rate to Cairo and the 18-cent rate to St. Louis from these points of origin.

The fact that prior to the advance lower rates had been in effect for some years was strongly urged by complainants in support of their contention; also, the allegation that the same rates had been in force on all of the railroads both east and west of the Mississippi River.

It must be borne in mind that this was not a general advance in the rates from all points of origin in the entire producing territory

west of the Mississippi River. Although the first step taken in 1903, dealing with these rates, was to advance some of them, whatever was the original purpose of the carriers at that time, the ultimate outcome was that while from points on a small number of the lines of defendant carriers operating in that portion of the blanket territory designated by complainants as Arkansas and northern Louisiana, the rates were advanced 2 cents, those from a large portion of the entire producing territory remained stationary, while there were material reductions in some quarters. The greater number of the defendant carriers did not advance the rates and did not receive any division of the 2 cent advance, and, in fact, did not operate in the territory complained of at the time of the advance. Some of the carriers had never established a less rate than 16 cents to Cairo and 18 to St. Louis. The alleged illegality complained of therefore relates to the action of a few carriers in a restricted portion of the producing territory and not to a general preconcerted advance by all the carriers from the whole territory.

Some testimony was introduced upon the question of the reasonableness of the rates, but the complaint was based and presented largely upon the theory of *res adjudicata*, because of the decisions in the *Tift* and the *Central Yellow Pine Association cases*, 10 I. C. C. Rep. 548, 505, which involved the reasonableness of a like and simultaneous increase of the rates from points in the southeastern territory to the Ohio River crossings.

The avowed purpose of the complaint, as stated by complainant's principal witness, who was an officer of one of the complaining companies doing a large lumber business in this territory, was to secure the same rates for the mills west of the Mississippi River as those enjoyed by the mills east thereof, the contention being that if the advance east of the river was unreasonable, that shippers west thereof were entitled to the benefit of the "test case" so made and decided, and as stated by this witness "the benefit of the test case should inure to us;" that there is now an unequal adjustment as between the mills on the east and west sides of the river; that the rates are no longer on a parity as between the said producing points; that rates were not advanced from other lumber-producing sections of the country, and that if the advance east of the river had not been condemned then the rates here involved would not be considered unreasonable. It is furthermore stated that the complaint is based upon the competitive features of the lumber business, and this proceeding instituted "because of the fact that our competitors enjoy the withdrawal of that advance," on the east side.

In view of the very general reference by complainants to the *Tift* and the *Central Yellow Pine Association cases* as affording a precedent and basis for the order which we are asked to make in this

proceeding, it is perhaps proper to indicate more definitely the action that was taken in those cases. Except from stations on the Mississippi Central from which the rate to Cairo was 16 cents, the carriers transporting lumber from Mississippi, part of Alabama, and that portion of Louisiana east of the river had for a considerable period blanketed that entire territory with a uniform rate, which was 14 cents to Cairo immediately prior to the increase of 1903, when it was advanced to 16 cents. The situation was different in Georgia and other territory covered by the *Tift case*. In this territory there was no such uniform blanket rate, but a number of groups on the different lines from which the rates, prior to the advance of 1903, ranged from 12 to 18 cents to Cairo for beyond. These rates from both territories were uniformly advanced 2 cents from practically all points, and as so increased they were condemned in the proceedings referred to by the amount of this 2-cent increase. The result is that now from many important producing points in Georgia, and other territory involved in the *Tift case*, the rates are as high, and from some of the groups considerably higher than is the present rate of 16 cents from the entire territory west of the Mississippi River involved in the case now under consideration.

Each case must be decided upon its own merits, and in arriving at a conclusion in respect to the rates here involved, the decision in another case against carriers operating in a different territory under essentially dissimilar circumstances and conditions affords no proper criterion therefor. The contention of complainants disregards the dissimilarity of transportation conditions in the two producing territories. Some of the lines on the east side of the Mississippi River are among the older roads of the country and have the advantage of more permanent construction, easier grades, better station, yard and siding facilities, and more valuable terminals, all of which contribute materially to economic operation. There is a greater density of population on the east side and the development is such that the volume of traffic exceeds that on the west side. This fact greatly contributes to the ability of these lines to handle all their business with greater advantage and profit. On the east side the roads have valuable terminals at the ports on the Gulf and handle the interior export and import trade, and their lines extend directly through the timber districts to Cairo and St. Louis.

Some of the transportation disadvantages on the west side of the river are the comparative sparsity of traffic due to the undeveloped condition of large districts from and through which the lumber must be transported; the inferior condition of the roads and the physical difficulties of operating long distances through a low, swampy territory subject to floods and frequent overflow. The track has to be

laid for considerable distances on trestle which must be provided with expensive draw spans, necessitating extraordinary outlays for maintenance. The lumber-carrying roads on the west side are less advantageously situated with respect to the ports, and consequently with respect to export and import traffic, than are those on the east side. On the west side, omitting the so-called logging roads or tap lines, the number of roads necessary for the performance of the through haul to destination and participating in the through rate is, upon the average, greater than on the east side. It is clear that substantial dissimilarity of conditions exists in respect to the transportation of this traffic from these producing territories, respectively.

Cairo being the basing point for rates on this traffic into Central Freight Association territory from both east and west of the Mississippi River, the situation of the lines serving the west side with reference to this territory of destinations is such that their rates to Cairo and St. Louis, respectively, on the traffic going beyond marks the limit of their earnings thereon.

The situation of most of the carriers serving the east side is quite different, for while the through rates are made on the Cairo combination, as they are from the west side, the earnings of these carriers are not generally limited to the amount of the rates to Cairo for beyond, but, as shown in the following statement, for a large part of this traffic they receive materially more, according to the different Ohio River gateways through which they may be able to move it.

Divisions of rates on lumber, carloads, in cents per 100 pounds.

From Tifton, Ga., to—	Via Cincinnati, Ohio.	Via Louisville, Ky.	Via Cairo, Ill.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Cleveland, Ohio:			
To Gateway.....	20	17	15
Beyond.....	10	13	15
Through.....	30	30	30
Columbus, Ohio:			
To Gateway.....	21½	17	15
Beyond.....	7½	12	14
Through.....	29	29	29
South Bend, Ind.:			
To Gateway.....	17	16	15
Beyond.....	10	11	12
Through.....	27	27	27
Michigan City, Ind.:			
To Gateway.....	15	14	15
Beyond.....	10	11	10
Through.....	25	25	25
Grand Rapids, Mich.:			
To Gateway.....	17	16	15
Beyond.....	12	13	14
Through.....	29	29	29

Divisions of rates on lumber, carloads, in cents per 100 pounds—Continued.

From Colquitt, Ga., to—	Via Cincinnati, Ohio.	Via Louisville, Ky.	Via Cairo, Ill.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Cleveland, Ohio:			
To Gateway.....	21	18	16
Beyond.....	10	13	15
Through.....	31	31	31
Columbus, Ohio:			
To Gateway.....	22½	18	16
Beyond.....	7½	12	14
Through.....	30	30	30
South Bend, Ind.:			
To Gateway.....	18	17	16
Beyond.....	10	11	12
Through.....	28	28	28
Michigan City, Ind.:			
To Gateway.....	16	15	16
Beyond.....	10	11	10
Through.....	26	26	26
Grand Rapids, Mich.:			
To Gateway.....	18	17	16
Beyond.....	12	13	14
Through.....	30	30	30
From Laurel, Miss., to—	Via Cincinnati, Ohio.	Via Louisville, Ky.	Via Cairo, Ill.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Cleveland, Ohio:			
To Gateway.....	19	16	14
Beyond.....	10	13	15
Through.....	29	29	29
Columbus, Ohio:			
To Gateway.....	20½	16	14
Beyond.....	7½	12	14
Through.....	28	28	28
South Bend, Ind.:			
To Gateway.....	16	15	14
Beyond.....	10	11	12
Through.....	26	26	26
Michigan City, Ind.:			
To Gateway.....	14	13	14
Beyond.....	10	11	10
Through.....	24	24	24
Grand Rapids, Mich.:			
To Gateway.....	16	15	14
Beyond.....	12	13	14
Through.....	28	28	28

Divisions of rates on lumber, carloads, in cents per 100 pounds—Continued.

From Ravanna, Ark., Noble, La., and Port Arthur, Tex., to—	Via Calro, Ill.	Via East St. Louis, Ill.
	<i>Cents.</i>	<i>Cents.</i>
Cleveland, Ohio:		
To Gateway	16	16
Beyond	15	13
Through	31	31
Columbus, Ohio:		
To Gateway	16	15
Beyond	14	12
Through	30	30
South Bend, Ind.:		
To Gateway	16	18
Beyond	12	10
Through	28	28
Michigan City, Ind.:		
To Gateway	16	18
Beyond	10	8
Through	26	26
Grand Rapids, Mich.:		
To Gateway	16	18
Beyond	14	12
Through	30	30

It is apparent that competitive conditions and the commercial interests of complainants rather than transportation conditions were the leading considerations that induced them to file this complaint, and that a relative adjustment of the rates of such a nature as will strengthen them against their competitors and improve the unfavorable market conditions claimed to exist among them as producers and dealers, would serve their purpose as effectually as a reduction of the present rates.

It is undoubtedly to the interest of carriers to so adjust their rates as to induce the movement of traffic, and it follows, therefore, that they should keep in close touch with commercial conditions pertaining to sales of commodities and the needs of communities, and adjust their charges, when practicable, within reasonable limitations, to meet those conditions and encourage sales and the movement of freight. While there is a mutual interest in sales and transportation, and it is proper that both seller and transporter should regard the same, the Commission, when called upon to determine what are just rates, must have due regard to the rights of the carriers as well as the interests of the shippers.

Notwithstanding the fact that the movement of traffic is encouraged and increased when carriers adjust their charges to meet mercantile interests, yet it can not be held to be a duty of the carriers, in adjusting their charges, to equalize the value of commodities in their final distribution.

Regarding the charge of discrimination because of higher rates on the lines west of the river than east thereof, it is only necessary to say that a carrier can not discriminate within the meaning of the statute except as between those whom it serves or whom it may lawfully be required to serve. It is not guilty of discrimination merely because it does not afford as favorable rates as others serving a different territory, though the products carried by each are brought to the same market. The law does not deal in these matters with all carriers collectively as a single unit or system, but its commands are directed to each, with respect to the service which it is required to perform.

It is shown that when the yellow-pine production in the territory involved began that it encountered strong competition in the woods of the northwest and later with the product of the Pacific coast. Prejudice existed against yellow pine because it was softer than some of the competitive woods and because it was regarded by many as inferior to them. Without favorable transportation facilities and rates it was difficult, if not impossible, at that time to develop the industry. It is admitted that the carriers cooperated with the lumbermen and were important aids and factors in opening and establishing permanent markets for the yellow pine. From statements compiled from the monthly reports of the Yellow Pine Manufacturers Association and filed in this record there were larger percentages of increase in the movement of lumber to Central Freight Association territory and Western Trunk Line territory from the west side of the Mississippi River than from the east side during the comparative periods of 1907 and 1908. Statements of the heaviest carriers from the territory complained of show increased tonnage, and a statement from the annual reports of the carriers to the Interstate Commerce Commission of the total tonnage of forest products handled from 1901 to 1907 shows an increase each year.

Following November 1, 1907, many mills curtailed their production and many others closed down. This was in keeping with the general situation during this period of business depression.

The blanket system resulting from the adjustment of 1903, whatever may have been the initial motives of the carriers in the inception of the changes in rates referred to, has had the effect to cure a somewhat incongruous transportation situation. Although this adjustment had its beginning in the increase of the rates on some of the lines, the final outcome, after numerous changes both of increase and reduction, appears to be an accommodation of transportation facilities to the lumbering operations in the entire producing territory, resulting in some economic advantages to both carriers and shippers when the territory is viewed as a whole.

The development of this lumber business began mainly in the northern part of the territory, and has steadily moved southward, so that the center of production in the territory as a whole has constantly moved in that direction and nearer to the seaboard where cheaper water transportation and wider markets would naturally attract the current of trade. These facts, in view of the tendency of a permanent, uniform rate, if not excessive, to increase the volume of traffic, furnishes, in part at least, an explanation for the final adoption by the carriers of the blanket plan of rates for this entire territory. On the other hand, the complaining manufacturers and shippers have testified that this general blanket adjustment is advantageous to all and should be preserved. Since its establishment in 1903 extensive manufacturing plants have been built, large investments made in land and timber, railroads with their attendant advantages have been constructed, and there have been a general upbuilding and development of this territory. The tonnage of lumber and other products has increased from year to year not only from the entire blanket zone but also from the territory complained of. The extension of the rates to the Gulf aids the manufacturer by giving him a choice of markets northward or southward and enlarges his field for making sales.

Counsel for complainants have well stated the duty of the Commission in the following language: "The decision of the Commission must be based upon broad principles of justice, founded upon the important and controlling facts as they may apply to all of the parties in interest." All of the most important carriers operating anywhere in this producing territory have been made defendants, and have answered and demonstrated their interest by resisting complainants' contentions, and therefore our view of this case should not be limited to those interests located in a restricted part of the producing territory nearest the basing points, but should be sufficiently broad to comprehend the welfare of the public, as well as carriers and shippers in the entire territory involved.

The rates complained of have not been shown to be unreasonable and excessive *per se*. There are many large interests in the territory involved that have not complained of these rates. As before stated, most of the complainants have undertaken to show that it is desirable, from the standpoint of all interests affected, that a uniform rate should apply from all points in this producing territory to Cairo and St. Louis and points basing thereon. Since, as has been shown, the center of production is constantly moving southward, it is manifest that longer average hauls are involved in the movement of this traffic from the territory as a whole. It is clear that the present so-called blanket system applied to this territory can not be maintained if the reductions sought by complainants are made, unless

the rates from the entire territory should be reduced to the basis of 14 cents. In all cases of blanket or group rates there is of necessity more or less disregard of distance and varying degrees of inequality, but such inequalities are not of necessity unreasonable or unjust when the situation is viewed from every standpoint, taking into account all interests. Absolute and demonstrable equality in all respects is not attainable. Reasonable approximation is the most that can be expected ordinarily. Though not always the case, these grouping or blanket arrangements in many cases, especially with reference to particular commodities, are of great advantage to the public and without serious injustice to any interest.

Unless necessary to the correction of rates found to be excessive and unreasonable from a part of the territory, we see no reason, under all the circumstances appearing, for interference with the present adjustment.

It is by no means certain that the defendant lines west of the Mississippi may not at some future time be influenced by competitive conditions and commercial considerations to meet through rates to destination points in Central Freight Association territory from such points of origin east of the river as have lower rates to the same destinations. It is one thing, however, for carriers to voluntarily reduce rates not excessive for the service performed, solely to meet such conditions, but quite a different thing for the Commission to undertake to compel them to make such reductions regardless of the transportation conditions.

It is shown that some of the advances in the rates from points in Arkansas and northern Louisiana, made in 1903, were the result of conference and understanding between some of the carriers making such advances, and some of those east of the river which made similar advances at the same time from points on their lines. This fact is much relied upon by complainants in support of their contention, and it has been duly considered in connection with all other facts, circumstances, and conditions bearing upon the question of reasonableness of the rates under consideration. It has been repeatedly held that this fact of itself does not of necessity establish the unreasonableness of the rates resulting in part from such conference and understanding.

During the progress of this investigation considerable testimony was introduced respecting so-called tap-line or logging-road allowances, or divisions of the through rates with the standard lines inuring directly or indirectly to a greater or less extent to the lumber producers and shippers. This testimony was deemed pertinent in this case as bearing only upon the claims for reparation made herein by the beneficiaries of these allowances or divisions, and since the rates in question have not been found to be unreasonable it follows that

no reparation will be awarded and no opinion is expressed as to the effect of this testimony upon this point. The question of the validity of tap-line allowances is more directly involved in another proceeding pending before the Commission in which further investigation and testimony may be desired; such views as we may deem it proper to express respecting the matter will be announced in due time in that case.

In view of all the facts, circumstances, and conditions disclosed, it is our conclusion that this complaint should be dismissed. It will be so ordered.



No. 1436.

WINN PARISH LUMBER COMPANY

v.

ARKANSAS SOUTHERN RAILWAY COMPANY ET AL. AND
28 OTHER CASES DISPOSED OF IN ORDER OF MAY 4,
1909, WHEREIN PARTIES ARE SPECIFICALLY NAMED,
WHICH CASES ARE INDICATED BY DOCKET NUMBERS
AS FOLLOWS: 1436, 1437, 1439, 1440, 1441, 1442, 1443, 1444,
1445, 1446, 1447, 1448, 1449, 1450, 1451, 1452, 1453, 1454, 1455,
1456, 1457, 1458, 1460, 1499, 1500, 1501, 1502, 1503, and 1820.

Submitted March 12, 1909. Decided May 4, 1909.

For reasons stated in the *Chicago Lumber & Coal Company case, supra*, the complaints in these cases are dismissed.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

These cases involve the same questions that were decided in *Chicago Lumber & Coal Co. et al. v. Tioga Southeastern Ry. Co. et al.*, 16 I. C. C. Rep., 323, and were heard together with it, and for reasons stated therein they will be dismissed.

16 I. C. C. Rep.

No. 1366.
KEYSTONE COAL COMPANY
v.
ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted March 12, 1909. Decided May 4, 1909.

For reasons stated in the *Chicago Lumber & Coal Company case, supra*, that part of this complaint involving shipments originating in Louisiana west of the Mississippi River is dismissed, but that part respecting shipments east of that river is retained upon the docket for further proof.

S. H. Haddock for complainant.

Ed. Baxter and *S. F. Andrews* for Illinois Central Railroad Company.

N. S. Brown for Wabash Railroad Company.

Winston, Payne, Strawn & Shaw for Chicago Junction Railway Company and Chicago & Alton Railroad Company.

Hale Holden for Chicago, Burlington & Quincy Railroad Company.

W. J. Henley for Belt Railway Company of Chicago.

F. J. Jerome for Lake Shore & Michigan Southern Railway Company.

E. B. Peirce for Chicago, Rock Island & Pacific Railway Company and Chicago & Eastern Illinois Railroad Company.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

This is a claim for reparation, based upon an alleged excess charge of 2 cents per 100 pounds upon shipments of yellow-pine lumber, originating at shipping points in the state of Louisiana, both east and west of the Mississippi River. In so far as this case involves shipments originating west of the river, it was heard together with *Chicago Lumber & Coal Co. et al. v. Tioga Southeastern Ry. Co. et al.*, 16 I. C. C. Rep., 323, and for reasons stated therein it will be ordered that this proceeding be dismissed as to such shipments. With respect to shipments originating east of the river, it will be ordered that this case be retained upon the docket for further proof.

No. 1785.
MERRIAM & HOLMQUIST
v.
UNION PACIFIC RAILROAD COMPANY.

Submitted March 8, 1909. Decided June 7, 1909.

Reparation awarded because of undue discrimination in favor of complainant's competitors in elevator allowances made by defendant at Omaha and Council Bluffs.

John G. Wharton and Byron G. Burbank for complainant.
Edson Rich for defendant.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

The defendant in the above-entitled case provided by tariff effective June 27, 1906, for the payment, under conditions named, of 1½ cents per 100 pounds for unloading into elevators at Omaha, Nebr., and Council Bluffs, Iowa, of grain transported by it from certain points on its line in Nebraska. June 1, 1907, the tariff was canceled and another one made effective which provided for an allowance of ¾ of a cent under the same conditions. Complainant owns 2 elevators in the city of Omaha, located on the Omaha Belt Line, operated by the Missouri Pacific. The purpose of this proceeding is to obtain payment for a number of carloads of grain brought to Omaha by defendant from points specified in the above tariffs and unloaded by complainant into its elevators and on which no allowance for elevation as provided by the tariffs was made.

Defendant declines to make payment on the ground (1) that the payment of elevator allowances is unlawful and (2) that the terms of the tariff with respect to the return of cars in forty-eight hours had not been complied with by the complainant as to certain of the carloads involved.

The issue presented in this case is precisely that considered in the cases of *Nebraska-Iowa Grain Co.*, *Crowell Lumber & Grain Co.*, *Updike Grain Co.*, *Cavers Elevator Co.*, and *Nye-Schneider-Fowler*

Grain Co., decided by the Commission January 6, 1909, 15 I. C. C. Rep., 90. The parties in this case stipulated that the evidence submitted in the above cases should be taken and considered as offered in this case so far as applicable. The facts with respect to receipt and shipment of complainant's grain brings this case within the findings made and the principle announced in those cases. For the reasons therein given we find that the defendant has unduly discriminated against complainant in its refusal to make payment of the elevator allowances on grain received in complainant's elevators while the allowance provided by the tariffs above mentioned was paid to their competitors and not to them.

We find that the complainant between June 28, 1906, and January 3, 1907, unloaded at its elevators 208 carloads of grain containing in the aggregate 13,053,800 pounds, where the cars, being both system and foreign cars, were returned to the defendant within forty-eight hours; that upon this amount the tariff allowance at the time it was unloaded was $1\frac{1}{2}$ cents per 100 pounds, or \$1,631.48.

That the complainant between June 27, 1906, and May 10, 1907, unloaded 308 carloads of grain at its elevators, which were returned to the Union Pacific more than forty-eight hours from the time they were received from that company; that the contents of these cars aggregated 26,521,380 pounds; and that upon this amount the tariff allowance at the time it was unloaded was $1\frac{1}{2}$ cents per 100 pounds, or \$3,315.17.

That the complainant between June 28, 1906, and April 6, 1907, unloaded 32 carloads of grain in its elevators from system cars of the Union Pacific which were not returned to that road; that said cars contained in the aggregate 2,051,300 pounds; and that the elevation allowance of $1\frac{1}{2}$ cents, the tariff rate in effect at the time of the unloading, amounted to \$256.41.

That the complainant, between July 17, 1906, and May 16, 1907, unloaded 369 cars of grain, which contained 24,950,230 pounds; that these shipments were made in foreign cars, which were not returned to the Union Pacific; and that the elevation allowance of $1\frac{1}{2}$ cents, the tariff rate in effect at the time of the unloading, amounted to \$3,118.78.

We find, therefore, that the complainant, Merriam & Holmquist, is entitled to recover of the defendant the sum of \$8,321.84, with interest.

No. 1960.
WELLS-HIGMAN COMPANY
v.
GRAND RAPIDS & INDIANA RAILWAY COMPANY ET AL.

Submitted March 19, 1909. Decided June 7, 1909.

Defendants' rate applicable to the transportation of grape baskets from Traverse City, Mich., to Montrose, Iowa, found unjust and unreasonable to the extent that it exceeds the combination of locals between the same points. Reparation awarded.

H. C. Higman for complainant.

Blackburn Esterline for Michigan Central Railroad Company.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

Complainant is engaged in the manufacture and sale of baskets and fruit packages, with main offices at St. Joseph, Mich., and factory at Traverse City, Mich.

It is alleged in the complaint that the charge by defendants of 30½ cents per 100 pounds for transportation of grape baskets from Traverse City, Mich., to Montrose, Iowa, is unreasonable to the extent that it exceeds 19 cents. Reparation in the sum of \$81.01 is asked.

August 13 and August 27, 1907, complainant shipped from Traverse City to Montrose two carloads of grape baskets weighing 33,300 and 34,800 pounds, respectively, on which the defendants charged their regularly published joint through rate of 30½ cents per 100 pounds, or a total sum of \$210.40. At the same time there was in effect over the same lines and between the same points a local rate on grape baskets, in carloads, of 10 cents per 100 pounds Traverse City to Chicago, and 9 cents per 100 pounds Chicago to Montrose, or a through rate of 19 cents. It is because of this lower combination that complainant alleges that the through rate is unreasonable.

In their answers the defendants deny that the through rate of 30½ cents is unreasonable. It is stated, however, that in view of decisions of the Commission, which hold that a through rate in excess

of the sum of the locals over the same lines and between the same points is *prima facie* unreasonable, defendants are willing for the purposes of this case and without prejudice to adjust the freight charges on the two shipments in question on the basis of the locals, and express a willingness that an order for reparation should be issued, each of the defendants to pay its proportion thereof.

At the hearing the Michigan Central only was represented, and no evidence was submitted in its behalf or of the other defendants. Under these circumstances the presumption obtains that the through rate was unreasonable to the extent that it exceeded the combination of locals. No evidence was submitted to the contrary. We therefore find that 30½ cents per 100 pounds charged by defendants for the transportation of grape baskets, in carloads, from Traverse City, Mich., to Montrose, Iowa, was unreasonable to the extent that it exceeded 19 cents per 100 pounds; that 19 cents per 100 pounds is a just and reasonable rate to apply to such shipments between the points named; and that complainant is entitled to reparation in the sum of \$81.01, with interest, the difference between the amount that was actually collected and the amount that would have been collected had the 19-cent rate applied. An order will be entered accordingly. The order will include a proviso requiring defendants to establish and enforce and apply to shipments of grape baskets, in carloads, from Traverse City, Mich., to Montrose, Iowa, a rate not to exceed 19 cents per 100 pounds for a period of not less than two years.

No. 1773.

NEWTON GUM COMPANY

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY
ET AL.

No. 1774.

FRANKEL DISPLAY FIXTURE COMPANY

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY
ET AL.

Submitted April 5, 1909. Decided June 7, 1909.

1. Tariffs are to be construed according to their language. The intention of the framers and the practice of the carriers do not control.
2. Commodity rates of Transcontinental Freight Bureau tariffs are not to be construed as governed by Western Classification in absence of tariff provisions to that effect.
3. On complaint alleging improper assessment of charges on shipments of show cases from Quincy, Ill., to San Francisco, Cal.; *Held*, That show cases are entitled to the commodity rate on furniture under transcontinental tariff in effect at the time of shipment. Reparation awarded.

Lester G. Burnett for complainants.

C. W. Durbrow for Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, and Southern Pacific Company.

E. W. Camp and *T. J. Norton* for Atchison, Topeka & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

These two cases present the same question. They were heard together and may properly be disposed of in one report.

The complaint in 1773 (Newton Gum Company v. Chicago, Burlington & Quincy Railroad Company et al.) is based upon a shipment of one carload of show cases, 10,540 pounds in weight, via defendants'

lines from Quincy, Ill., to San Francisco, Cal., in December, 1907. In No. 1774 (Frankel Display Fixture Company v. Chicago, Burlington & Quincy Railroad Company et al.) the complaint is based on the shipment of 2 carloads of show cases, aggregating 40,900 pounds in weight, via defendants' lines from Quincy, Ill., to San Francisco, Cal., in December, 1906, and January, 1907. In the first instance charges were collected in the amount of \$316.20 and in the second in the amount of \$1,227, or at the first class rate of \$3 per 100 pounds, upon the authority of Transcontinental Freight Bureau westbound tariff 1-G, I. C. C. 375, and the Western Classification in effect at the time of shipment. Complainants contend:

(1) That the rate properly applicable was the commodity rate on furniture, or \$2.20 per 100 pounds, carried in the Transcontinental Freight Bureau westbound tariff No. 1-G aforesaid, reading as follows:

Furniture (new), all kinds, minimum carload weight 12,000 pounds..... \$2. 20

(2) That a rate of \$3 per 100 pounds on show cases is unreasonable and unjust.

Our initial problem is one of tariff construction. In this connection it will prove helpful to set forth in detail the provisions of Transcontinental Freight Bureau westbound tariff 1-G, I. C. C. No. 375, effective at the time these shipments moved, carrying rates on furniture from various points in the east and middle west to Pacific coast terminals. These provisions are as follows: (The rates from Mississippi River common points are given in each instance.)

Rates from Mississippi River common points, in cents per 100 pounds.

	L. C. L.	C. L.
FURNITURE, o. r. b. and chafing, or released, minimum carload weight 20,000 pounds, except as otherwise noted, as follows:		
Bedsteads, wooden (including wooden folding beds), bureaus, chiffoniers, and washstands, net cost of each piece enumerated not to exceed the following and so receipted for, viz:		
Bedsteads or folding beds, \$12 each; bureaus or chiffoniers, \$16 each; washstands, \$6 each; straight or mixed carloads.....		145
Articles described above, as from machine or bench, unfinished, in the white, minimum carload weight 24,000 pounds		120
Bedsteads (iron), cribs (iron), institution beds (iron), plain or with brass trimmings, k. d., minimum carload weight 24,000 pounds.....	175	120
Church pews, k. d., in packages or bundles.....		160
Desks (not combination), minimum carload weight 16,000 pounds.....		175
Furniture (new), all kinds, minimum carload weight 12,000 pounds.....		220
Chairs, as from machine or bench, unfinished, in the white, not mahogany, rosewood, ebony, black walnut, or cherry; also wood seats for chairs, perforated or unperforated, unfinished, in the white, minimum carload weight 24,000 pounds.....		120
Furniture, second-hand. Same as new furniture.		
Mattresses and frames, metallic, wire cots, wooden folding cribs with woven-wire bottoms (k. d. or folded flat), wire and spring beds and bottoms, and canvas cots, not upholstered, in packages.....	160	
Mattresses and frames, metallic, wire cots, wooden folding cribs with woven-wire bottoms (k. d. or folded flat), wire and spring beds and bottoms, and canvas cots, not upholstered.....		110
Mattress frames, wooden, k. d., minimum carload weight 30,000 pounds.....		85

Rates from Mississippi River common points, in cents per 100 pounds—Continued.

	L. C. L.	C. L.
Chairs, as follows:		
Not upholstered, made of mahogany, rosewood, ebony, black walnut, or cherry, k. d., flat and compact, if finished, well boxed.....	205	.....
Same, if crated.....	235	.....
Same, if in the white, well boxed.....	170	.....
Same, if in the white, crated or in bundles.....	195	.....
Cane-seated, carpet-seated, leather-board, perforated wood or wooden-seated (not consisting wholly or partially of mahogany, rosewood, ebony, black walnut, or cherry), not reed, willow, or rattan, not upholstered, k. d., flat and compact, if finished and well boxed.....	190	.....
Same, if finished, crated.....	215	.....
Same, if finished, in bundles, o. r. b., and chafing.....	235	.....
Same, if in the white, well boxed.....	170	.....
Same, if in the white, crated or in bundles.....	195	.....
Camp and folding (not rockers), released, net cost not more than \$9 per dozen, k. d., flat and boxed.....	190	.....
Same, k. d., flat, crated or in bundles.....	215	.....
All of the chairs described in these bracketed paragraphs (irrespective of what shape the goods are shipped in whether set up or k. d.); also wood seats for chairs, perforated or unperforated, finished or unfinished, in straight or mixed carloads.....		145
Iron theater chairs, wood, cane, perforated seat or upholstered, straight or mixed, carload, minimum weight 24,000 pounds.....		165
Kindergarten seats and tables.....		125
Kitchen safes (ventilated), net cost not to exceed \$9 each.....		120
Rattan furniture stock.....	185	125
Wooden stock for furniture, in the white, as follows:		
Turned-under stock and rockers for chairs; cane seats for chairs; turned-under stock for settees and lounges, k. d.; cane seats for settees; bottoms for baby carriages; turned wood ornaments and dowel pins for the articles enumerated in this paragraph.....	185	125
NOTE.—Dowel pins must be packed in boxes, barrels, crates, or sacks.		
Settees, wooden, not upholstered. Same rate as chairs, and subject to same qualifications as to wood, finish, and packages.....		
Rattan, reed, and willow chairs and furniture, boxed.....	320	.....
School seats or settees and desks for scholars.....		125
Sideboards, buffets, combination buffets and sideboards, and chiffoniers, net cost of each piece not to exceed \$16, and so receipted for, minimum carload weight 16,000 pounds.....		160
Tables, brass, k. d., boxed.....	240	.....
Tables, folding (including invalid or bedside tables), k. d., flat, boxed or crated.....	195	.....
Tables, in the white, unfinished, net cost not more than 40 cents per running foot, and so receipted for.....		145
Tables, table legs, slides, leaves, and supports (extension tables, k. d.), not mahogany, rosewood, ebony, black walnut, or cherry, straight or mixed carloads, minimum weight 24,000 pounds.....		145
Table slides, in packages, o. r. b., and chafing.....	200	.....
Wood seats for chairs, perforated or unperforated, boxed or crated.....	190	.....
Fiber chair seating, boxed.....	190	.....
Leather board, for chair seats, in crates or bundles, o. r. c.....	230	.....

Chair frames (not upholstered) may be taken in mixed carloads with chairs at the chair rate, subject to the same conditions as to wood, finish, etc., as govern the chair rate, and they may also be taken in carloads with new furniture at the new-furniture rate.

Furniture and chairs, consisting in part of mahogany, rosewood, ebony, black walnut, or cherry, will take the same rate as if consisting wholly of such woods.

Furniture and chairs having one or more coats of oil, shellac, varnish, paint, or other preparation, will take rates provided for finished goods, but one coat of priming, as provided by rule 19, may be allowed upon goods "in the white."

The rates provided for chairs and furniture "in the white" will be applied only to chairs and furniture coming strictly under that designation.

Boxes must be tight and completely inclose the freight to entitle it to the rates provided for freight "well boxed."

Open boxes will be considered same as crates.

Moss and excelsior, when used as packing to protect furniture, same rate as furniture. This applies when used in sufficient quantities only to protect, and does not include hair or feathers.

Sheet-metal kitchen safes, net cost not exceeding \$9 each (carload), may be taken under carload rating provided for kitchen safes (ventilated), net cost not exceeding \$9 each.

The class rates from Mississippi River common points to Pacific coast terminals are as follows (in cents per 100 pounds):

Class....	1	2	3	4	5	A	B	C	D	E
Rate....	300	260	220	190	165	160	125	100	100	95

These class rates are governed by the Western Classification. The provisions of the Western Classification, No. 41 (effective October 1, 1906), applicable to furniture, in carloads, are as follows:

	Rule.
FURNITURE, new and second-hand furniture forwarded for sale or speculation, carloads:	
Bank, store, saloon, and office furniture, carload, consisting of arm rails, back bar mirrors, bottle cases, chairs, counters, counter fittings, desks, foot rails, metal brackets for arm and foot rails, refrigerators, tables, and work boards, minimum weight 12,000 pounds (subject to Rule 6-B)....	3
NOTE.—Door, window, and bar screens, partitions, prescription cases, patent-medicine cases, show cases, wall cases, wainscoting, office railing, and wooden mantels may be shipped with bank, store, saloon, or office furniture in mixed carloads (subject to Rule 21-B.)	
Show cases must not exceed in linear feet the length of wall space as indicated by shelving base.	
Beds, iron and brass; metal couch frames, folded flat; spring beds, compressed; and metallic mattresses, cots, and cribs	5
Bed slats, minimum weight 24,000 pounds.....	D
Bedsteads (wooden, not folding beds), and tables, k. d., minimum weight 24,000 pounds	4
Camp furniture, folding, carload, minimum weight 20,000 pounds (subject to Rule 6-B).....	4
Chairs, common, including common rocking chairs (complete chairs, cane, leather, or wood seat, not upholstered; but exclusive of chair frames, upholstered chairs and rattan chairs), metal chairs, and settees, minimum weight 12,000 pounds (subject to Rule 6-B).....	4
Chair seats (perforated wood), minimum weight 24,000 pounds.....	A
Chair splints, in bales, minimum weight 24,000 pounds	B
Cot and mattress frame material (wood), in the white, completely k. d., minimum weight 24,000 pounds.....	C
Couch material (steel).....	5
Furniture and furniture frames, exclusive of bank, store, saloon, or office furniture, minimum weight 12,000 pounds (subject to Rule 6-B).....	3
Furniture, reed and rattan, minimum weight 10,000 pounds (subject to Rule 6-B).....	2
Furniture stock:	
In the rough, minimum weight 24,000 pounds.....	B
In the white, k. d., minimum weight 24,000 pounds.....	A
Lounge legs, minimum weight 24,000 pounds.....	A
Mattresses, other than wire, minimum weight 9,000 pounds (subject to Rule 6-B)	2

FURNITURE, etc.—Continued.

Rule.

Mirrors and looking glasses, framed or unframed, and slabs (marble, slate or stone) for furniture, boxed or crated, may be loaded in mixed carloads with articles of furniture of which they form a part, at the carload rating for such furniture.

Refrigerators, household, minimum weight 18,000 pounds (subject to Rule 6-B).....	4
School desks and seats, for pupils only, minimum weight 24,000 pounds..	4
School-desk castings.....	5
Side bed rails (iron).....	5
Spring beds and woven-wire mattresses, minimum weight 10,000 pounds (subject to Rule 6-B).....	2
Tables, n. o. s., k. d., minimum weight 24,000 pounds.....	4
Table slides.....	B
Wardrobes, metal, k. d. flat, crated.....	5

Show cases are listed separately in the classification, as follows:

Show cases, including cigar refrigerators (wood and glass combined), boxed, bottoms crated or cleated.....	1½
Show cases, boxed (bottoms crated or cleated), show-case frames and show-case supports, minimum weight 10,000 pounds carload (subject to Rule 6-B).....	1
Show cases, k. d. flat, invoice value of plate glass not exceeding 15 cents per square foot and so receipted for, boxed or crated.....	1
Show-case frames, boxed or crated.....	3 to 1
Show-case material, n. o. s., k. d., and packed.....	1
Show-case stands (iron), k. d., in bundles or crates.....	2

We have quoted from the Western Classification in effect at the time of shipments of which complaint is made in No. 1774. A subsequent issue was in force at the time the shipment in No. 1773 was made, but there is no substantial difference between the two issues. Further quotations will be unnecessary for the purposes of this report.

Complainants contend that the item "Furniture (new), all kinds, minimum carload weight 12,000 pounds, \$2.20," is broad enough to cover show cases; further, that this rate is a commodity rate, and therefore takes precedence over class rates. Defendants argue that this commodity rate is based upon the third class rate under the Western Classification; when the carriers established it they intended to restrict its application to such furniture as might be listed under the caption "Furniture" in the current classification; inasmuch as show cases are separately provided for in the classification and not under the "Furniture" heading, they are not entitled to the furniture rate. It is added that such has been the interpretation of the tariff by all lines party thereto. We quote from the defendants' abstract of evidence:

The guide in interpreting the commodity tariffs has always been (p. 43) that any article provided for under Western Classification heading of "Furniture" was entitled to come under that rate for 12,000 pounds at the \$2.20 per 100 rate, if not provided for

specifically in the commodity tariff elsewhere; that show cases being provided for separately in the Western Classification are not under the heading of furniture—that is, in the commodity tariff; that this is the interpretation of all lines west of Chicago parties to the Western Classification.

In their brief defendants urge:

We contend that uniform and long usage controls as to the interpretation of tariffs, just as a uniform construction put upon a contract by the parties thereto controls in the interpretation thereof.

In short, the defendants' position is as follows: The item "Furniture (new) all kinds" does not mean "Furniture (new) all kinds" at all, because such was not the intention of its framers; neither have the carriers so interpreted it. But they fail to direct our attention to any provision in the Transcontinental tariff making its commodity rates subject in any wise to the Western Classification.

The law compels carriers to publish and post their schedules of charges upon the theory that they will be informative. A shipper who consults them has a right to rely upon their obvious meaning. He can not be charged with knowledge of the intention of the framers or the carrier's canons of construction or of some other tariff not even referred to in the one carrying the rate. The public posting of tariffs will be largely useless if the carrier's interpretation is to be dependent upon tradition and the arbitrary practices of a general freight office. This Commission has long since repudiated the suggestion that railroad officials may be looked to as authority for the construction of their tariffs (see *Hurlburt v. Lake Shore & Michigan Southern Ry. Co.*, 2 I. C. C. Rep., 122). We quote from Judge Cooley's opinion in that case:

A classification sheet is put before the public for its information. It is supposed to be expressed in plain terms, so that the ordinary business man can understand it, and, in connection with the rate sheets, can determine for himself what he can be lawfully charged for transportation. The committee who prepared this classification have no more authority in construction than anybody else, and they must leave the document, after they have given it to the public, to speak for itself.

Tariffs are to be construed according to their language. This Commission can recognize no other criterion. Applying this principle, are show cases furniture?

Defendants recognize bottle and liquor cases and grocery display counters as furniture by listing them under that caption (in less than carload lots) in the Western Classification. This course seems altogether proper—they constitute part of the movable equipment of a store, and are, therefore, furniture. The status of show cases is identical with that of grocery display counters. We rule that the item "Furniture (new), all kinds" means exactly what it says, and that it is broad enough to cover show cases. It follows that the

rate lawfully applicable to these shipments of show cases was \$2.20 per 100 pounds, minimum carload weight 12,000 pounds. Reparation will be awarded in the amount of the overcharge disclosed by the record—\$52.20, with interest, to the complainant in No. 1773, and \$327.20, with interest, to the complainant in No. 1774.

In view of this finding, consideration of complainants' second contention is unnecessary.

This inquiry has revealed a highly unsatisfactory tariff situation. If these defendants desire that the application of the commodity rate on furniture, as carried in the Transcontinental Freight Bureau west-bound tariff 1-G, shall be restricted to the carload list of furniture in the current Western Classification, they should so stipulate in their tariff. In the absence of such a stipulation they can not be allowed to read into the tariff rules and regulations which materially modify the apparent application of their rates. This Commission has already announced in Supplement No. 3, tariff circular No. 15-A (amended Rule 3-e):

A tariff is not governed by a classification or exceptions thereto except when and to the extent stated on the tariff.

These provisions of the Transcontinental Freight Bureau west-bound tariff and the Western Classification covering rates on furniture are blind and ambiguous to a degree. Their revision should be no longer postponed. Tariffs should be framed so clearly that their meaning will be absolutely clear to members of the shipping public for whose benefit the carriers' schedules are posted. If the application of a tariff is dependent upon the arbitrary practices of a carrier, it is little better than no tariff at all.

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No. 1893.

ALBERT TROSTEL & SONS

v.

MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY
COMPANY ET AL.

Submitted May 6, 1909. Decided June 7, 1909.

Reparation awarded for unreasonable charges collected on a shipment of tan bark from
Trenary, Mich., to Milwaukee, Wis.

A. B. Caswell for complainant.

Alfred H. Bright for Minneapolis, St. Paul & Sault Ste. Marie Rail-
way Company.

William Ellis for Chicago, Milwaukee & St. Paul Railway Company.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

On August 9, 1907, complainant shipped one carload of tan bark, 25,760 pounds in weight, from Trenary, Mich., to Milwaukee, Wis. Under complainant's routing instructions shipment moved via the line of the defendant, Minneapolis, St. Paul & Sault Ste. Marie Railway Company, from Trenary to Pembine, Wis., and over the line of the Chicago, Milwaukee & St. Paul Railway Company from the latter point to destination. Charges were collected in the amount of \$48.94, or at the Class C rate of 19 cents per 100 pounds. At the time of shipment a rate of 12 cents per 100 pounds on tan bark in carloads was effective from Trenary to Milwaukee via the lines of the Minneapolis, St. Paul & Sault Ste. Marie and Chicago & North Western railways, and effective February 26, 1908, defendants made this rate applicable via the route the shipment in question moved. Complainant contends that the rate assessed was unjust and unreasonable and asks reparation in the amount of \$18.03, the difference between the charges collected and the charges based upon the rate of 12 cents per 100 pounds.

We find that the rate of 19 cents per 100 pounds charged and collected by defendants on this shipment was unjust and unreasonable to the extent that it exceeds the rate of 12 cents per 100 pounds, which has been made effective since the shipment moved. Reparation will be awarded in the amount of \$18.03 with interest.

No. 2019.
WINDSOR MILLING & ELEVATOR COMPANY
v.
COLORADO & SOUTHERN RAILWAY COMPANY ET AL.

Submitted May 10, 1909. Decided June 7, 1909.

Reparation awarded for collection of unreasonable charges on shipments of flour from Windsor, Colo., to Eunice and Opelousas, La.

J. E. O'Connor for complainant.

E. E. Whitted and *R. R. Widdicombe* for Colorado & Southern Railway Company, and Fort Worth & Denver City Railway Company.

F. C. Dillard, Dorsey & Hodges, and *E. I. Thayer* for Houston & Texas Central Railroad Company; Texas & New Orleans Railroad Company; Morgan's Louisiana & Texas Railroad & Steamship Company, and Louisiana Western Railroad Company.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

Complainant shipped 2 carloads of flour aggregating 76,800 pounds in weight via defendant's lines from Windsor, Colo., to Eunice, La., in February, 1908. Charges were collected in the amount of \$629.76, or at the rate of 82 cents per 100 pounds made up of the class rate of 77 cents from Windsor to Midland, La., and 5 cents beyond. In the same month complainant shipped another carload of flour, 38,400 pounds in weight, from Windsor to Opelousas, La., charges being collected in the amount of \$295.68, or at the class rate of 77 cents per 100 pounds. Complainant alleges that the rates assessed were unjust and unreasonable, and asks reparation for the excessive charges collected.

Eunice, La., is reached by a branch line of Morgan's Louisiana & Texas Railroad & Steamship Company connecting with the main line at Midland, while Opelousas is located on another branch of the same railroad leaving the main line at La Fayette. Midland and La Fayette are intermediate points on the main line between Windsor and New Orleans. Prior to October 26, 1907, the rate on flour from

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Windsor to New Orleans was 42½ cents per 100 pounds, and this rate was applicable at intermediate points. Shipments to Eunice and Opelousas took the 42½-cent rate plus the locals from Midland and La Fayette, respectively. On republication of tariffs on October 26, 1907, the rate to New Orleans was increased to 45 cents, but the provision making this rate applicable at intermediate points was omitted through clerical error. The class rate was therefore the only rate lawfully applicable at the time of the shipments upon which complaint is based. Effective March 20, 1908, this error was corrected, thereby giving Eunice a rate of 50 cents per 100 pounds made up of the 45-cent rate plus the arbitrary from Midland. Similarly the rate to Opelousas was now 59 cents per 100 pounds, the combination on La Fayette. On September 15, 1908, a new tariff was issued establishing a rate of 57½ cents to both Eunice and Opelousas.

We find that the rates assessed on these shipments were unjust and unreasonable to the extent that they exceed the rates of 50 and 59 cents per 100 pounds effective to Eunice and Opelousas, respectively, March 20, 1908. Reparation will be awarded in the sum of \$314.88, with interest, the difference between the amount collected and the charges which we find would have been reasonable at the time of shipment.

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No. 1950.

E. I. DU PONT DE NEMOURS POWDER COMPANY

v.

NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY ET AL.

Submitted March 31, 1909. Decided June 7, 1909.

Rate of 69 cents per 100 pounds on safety fuse in carloads from Avon, Conn., to Pleasant Prairie, Wis., found to be unreasonable to the extent that it exceeded 44 cents per 100 pounds. Reparation awarded.

J. B. D. Eager for complainant.

E. G. Buckland for New York, New Haven & Hartford Railroad Company.

Ed. Baxter for Louisville & Nashville Railroad Company.

C. B. Fernald and *A. B. Burgwin* for Pittsburg, Cincinnati, Chicago & St. Louis Railway Company.

S. A. Lynde for Chicago & North Western Railway Company.

Ed. Baxter and *Sidney F. Andrews* for Norfolk & Western Railway Company and Old Dominion Steamship Company.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

By agreement of the parties this complaint, which was filed December 24, 1908, is submitted to the Commission for determination upon the facts set forth in the pleadings.

Complainant is engaged in the sale and shipment of safety fuse and its principal place of business is Wilmington, Del. On April 3, 1907, it caused to be shipped via the lines of defendants from Avon, Conn., to Pleasant Prairie, Wis., one carload of safety fuse, weight 24,000 pounds, upon which it paid charges at the rate of 69 cents per 100 pounds in the sum of \$165.60. It is alleged that the rate should not have exceeded 44 cents per 100 pounds, and reparation in the sum of \$60 is asked.

Avon, Conn., is on the line of the defendant New York, New Haven & Hartford Railroad, and that carrier handled the shipment from that point to Pier 20, New York, where it was delivered to the defendant

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Old Dominion Steamship Company, which transported it to Norfolk, where delivery was made to the defendant Norfolk & Western Railway. The other defendant carriers participated in the remainder of the movement to destination, the Chicago & North Western Railway being the delivering carrier.

Without going fully into details, it is sufficient to say that at the time this shipment moved the tariffs actually provided for the 69-cent rate, but the tariffs were in an incomplete, inaccurate, and uncertain condition, and what they actually provided for was not what the carriers intended to provide. These complications have been removed, and the tariffs applying via the route over which the shipment moved now provide a rate of 44 cents per 100 pounds on safety fuse in carloads from Avon, Conn., to Pleasant Prairie, Wis. Out of this rate the New York, New Haven & Hartford Railroad receives its local rate from Avon to New York, and that is what that defendant did receive on the shipment in question.

All defendants, with the exception of the New York, New Haven & Hartford Railroad Company, admit that the rate charged on the shipment was unjust and unreasonable to the extent that it exceeded 44 cents per 100 pounds and express a willingness to make reparation to the complainant in the sum of \$60 upon order of the Commission.

From the foregoing facts the Commission finds that the rate of 69 cents per 100 pounds charged and collected on complainant's shipment of safety fuse from Avon, Conn., to Pleasant Prairie, Wis., was unjust and unreasonable to the extent that it exceeded 44 cents per 100 pounds and that complainant is entitled to reparation from the defendants (excepting the New York, New Haven & Hartford Railroad Company, as to which defendant complaint will be dismissed) in the sum of \$60 with interest.

A order will be entered in accordance with these views.

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No. 2108.

PEPPERELL MANUFACTURING COMPANY

v.

TEXAS SOUTHERN RAILWAY COMPANY ET AL.

Submitted May 13, 1909. Decided June 7, 1909.

Class rate of \$1.37 per 100 pounds on cotton from Marshall, Tex., to East St. Louis, Ill., as a part of through rate to Biddeford, Me., found to be unreasonable to the extent that it exceeded 60 cents per 100 pounds. Reparation awarded.

P. L. Stackpole for complainant.

Edgar J. Rich for Chicago, Indiana & Southern Railroad Company; New York, Chicago & St. Louis Railroad Company; Erie Railroad Company; Delaware & Hudson Company; Boston & Maine Railroad; Cleveland, Cincinnati, Chicago & St. Louis Railway Company; Lake Shore & Michigan Southern Railway Company, and Lehigh Valley Railroad Company.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

This complaint alleges unreasonable charges upon two shipments of cotton, each shipment containing 100 bales, forwarded from Marshall, Tex., to Biddeford, Me.

The shipments moved on domestic bills of lading Nos. 22 and 23, issued by the Texas Southern Railway Company at Marshall, Tex., January 15, 1907. Each of these bills of lading contained the specification of rate of 95 cents per 100 pounds to Biddeford, and also the phrase "Rates guaranteed."

At the time these shipments moved there was in effect by the Texas & Pacific Railroad and its connections a commodity rate of 95 cents per 100 pounds to Biddeford, Me., from all stations on the Texas Southern Railway, including Marshall. Corresponding rate applied from other neighboring points, and it is not customary for cotton to move from this territory under class rates. The shipments in question were delivered by the Texas Southern Railway to the Missouri, Kansas & Texas Railway via which line there was at the time no through rate from Marshall to Biddeford.

Shipments were delivered to complainant by the Boston & Maine Railroad accompanied by demand of payment of charges at the rate of \$1.72 per 100 pounds, which rate was a combination of a class rate of \$1.37 per 100 pounds from Marshall to East St. Louis, Ill., and a commodity rate of 35 cents per 100 pounds from East St. Louis to Biddeford. These charges were protested by complainant, but were finally paid on November 27, 1908.

It is admitted that the rate of 35 cents per 100 pounds from East St. Louis to Biddeford is reasonable, and it is alleged that the rate of \$1.37 from Marshall to East St. Louis is unreasonable. Complainant prays that 95 cents per 100 pounds be established as a reasonable through rate via the route over which these shipments moved, and that reparation be awarded to it for all charges paid by it upon these shipments in excess of said rate of 95 cents per 100 pounds.

Effective October 10, 1907, the rates on cotton via all lines from Marshall, Tex., to Boston rate points, including Biddeford, Me., were made 97 cents all-rail and 95 cents via the Gulf ports. These rates have been continued and are now in force, being contained in Leland's cotton tariff, I. C. C. No. 540, effective November 1, 1908. The Marshall & East Texas Railway, formerly the Texas Southern, is party to this tariff.

It appears that Mr. C. L. Taylor, receiver of the Texas Southern Railway, made some efforts to secure informal adjustment of this matter. So much time, however, was consumed in correspondence and with such little promise of results that this complaint was filed in order to save the statute of limitation.

It appears that the Texas Southern Railway, together with its appurtenances, was sold at judicial sale in August, 1908, the successor being the Marshall & East Texas Railway Company; that this sale was confirmed at the October, 1908, term of the district court of Harrison County, Tex.; that on November 8, 1908, final judgment was rendered approving the report of Mr. C. L. Taylor and discharging him as receiver; that Mr. P. M. Young was appointed receiver to succeed Mr. C. L. Taylor, and was ordered and empowered to carry out the terms of the judgment; and that the distribution of the proceeds of said sale is under the jurisdiction and management of the district court of Harrison County, Tex. The Texas Southern Railway, P. M. Young, receiver thereof, and the Marshall & East Texas Railway Company are made defendants herein.

It appears that the earnings of the roads north and east of East St. Louis, to wit, 35 cents per 100 pounds, are the same regardless of the route over which the traffic comes to East St. Louis. The correspondence of Receiver Taylor, before referred to, contains admissions that the rate charged upon these shipments to East St. Louis was

unreasonable. The correspondence also shows that Mr. Miller, of the Missouri, Kansas & Texas road, expressed a willingness to join the other carriers in having the rate of 95 cents protected, but he declined to make the initial move in presenting the matter informally to the Commission. Apparently the sale of the initial line, the Texas Southern Railway Company, interfered with these negotiations.

No carrier west or south of East St. Louis was represented at the hearing.

In view of these facts the Commission is of the opinion that the rate of \$1.37 per 100 pounds charged on these shipments from Marshall, Tex., to East St. Louis, Ill., was unreasonable to the extent that it exceeded 60 cents per 100 pounds, and that the complainant is entitled to recover from defendants, Texas Southern Railway Company, P. M. Young, receiver thereof, Missouri, Kansas & Texas Railway Company, St. Louis Merchants Bridge Terminal Railway Company, and the Terminal Railroad Association of St. Louis, reparation for the difference between the charges on these shipments from Marshall, Tex., to East St. Louis, Ill., at the rate of \$1.37 per 100 pounds charged and at the rate of 60 cents per 100 pounds herein found to be reasonable, in the sum of \$756.58 with interest, and such an order will be entered.

As to all other defendants the complaint will be dismissed. Through rates equal to those in effect via the various other lines were established via the route over which these shipments moved prior to the filing of this complaint, and no attack is made upon the reasonableness of the present rates, which have been in effect since October, 1907. No order will therefore be entered as to the rates for the future.

No. 1815.
SNOOK & JANES
v.
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted May 18, 1909. Decided June 7, 1909.

Rate on fence posts from Amarillo, Tex., to St. Vrain, N. Mex., of 34 cents per 100 pounds found unreasonable, and the subsequently established rate of 16 cents per 100 pounds prescribed for the future. Reparation awarded on that basis against defendant lines west of Amarillo.

M. W. Janes for complainant.

Robert Dunlap and *T. J. Norton* for Atchison, Topeka & Santa Fe Railway Company.

E. B. Peirce for Chicago, Rock Island & Pacific Railway Company.

D. L. Meyers for Pecos & Northern Texas Railway Company and Eastern Railway Company of New Mexico.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

On October 24, 1908, complainant, general merchants doing business at Seminole, Okla., filed complaint against defendants, common carriers subject to the act, alleging that on April 17, 1908, it shipped one carload of split-oak fence posts from Asher, Okla., via Amarillo, Tex., to St. Vrain, N. Mex., on which a combination rate of 52 cents per 100 pounds was charged; 18 cents, Asher to Amarillo, and 34 cents thence to destination, which latter charge is alleged to be unjust and unreasonable to the extent that it exceeded 12 cents per 100 pounds. In addition to asking reparation it is prayed that a joint through rate be established.

Defendant, the Santa Fe, answering, admits shipment; states that the rate charged by the Pecos & Northern Texas Railway and Eastern Railway of New Mexico for transportation of the posts from Amarillo to St. Vrain was as alleged, but denies such rate to have been excessive and denies that 12 cents would be a reasonable rate or that complainant has been overcharged.

It appears that at the time shipment moved there was no joint through rate on fence posts between the points of shipment, and

fence posts are not produced at Amarillo, and there was little demand for them in the vicinity of St. Vrain; the only rate in effect from Amarillo to St. Vrain was a Class-D rate on lumber of 34 cents.

On May 12, 1908, the carriers engaged in the transportation filed an agreed statement of facts, in which it is set forth that at conference with complainant said lines admitted the rate of 34 cents to be unjust and unreasonable and that a rate of 16 cents per 100 pounds would be a fair and reasonable rate on fence posts, minimum weight 30,000 pounds, from Amarillo to St. Vrain. In letter to Commission complainant agreed to accept 16-cent rate if reparation was ordered and lines west of Amarillo would establish to points west of St. Vrain to and including Vaughn, N. Mex., from Amarillo to Roswell, N. Mex., and intermediate points, from Amarillo to Plainview, Tex., and intermediate points, rates on a basis corresponding with the 16-cent rate to St. Vrain. In amendment No. 45 to Santa Fe System tariff, I. C. C. No. 3654, effective March 31, 1909, defendants established rate of 16 cents to St. Vrain with corresponding figures to other points of destination. In acceptance of adjustment complainant waives establishment of joint through rate.

The Pecos & Northern Texas Railway Company and Eastern Railway Company of New Mexico were not joined as parties defendant in complaint. These lines are part of the Santa Fe System and have voluntarily made themselves parties defendant herein by joining in the agreed statement of facts, upon which they, with the other defendants, agree to submit the case to the Commission for hearing and determination, and the filing of answers by said lines is thereby waived.

- On the record, the Commission is of the opinion that the rate on fence posts from Amarillo, Tex., to St. Vrain, N. Mex., of 34 cents per 100 pounds was unjust and unreasonable and should not have exceeded the subsequently established rate of 16 cents per 100 pounds, and that complainant is entitled to recover from the defendants the difference between the charges under the rate of 34 cents per 100 pounds and what the charges would have been under the rate of 16 cents per 100 pounds, or \$89.28, with interest, for the payment of which an order will issue against the lines west of Amarillo. As to the defendant, the Rock Island, the complaint will be dismissed. The Commission is also of the opinion that the rate on fence posts in carloads, minimum weight 30,000 pounds, from Amarillo to St. Vrain, should not, for a period of two years, exceed 16 cents per 100 pounds, admitted by defendants and by the Commission hereby found to be reasonable.

An order in accord with these views will be entered.

No. 1919.

SCULLY STEEL & IRON COMPANY

v.

LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY ET AL.

Submitted February 11, 1909. Decided June 8, 1909.

Reparation in the sum of \$38.59, with interest, awarded for unreasonable charges exacted for the transportation of one carload of steel from Buffalo, N. Y., to Watertown, Wis.

Lemuel H. Foster for complainant.

R. J. Cary for Lake Shore & Michigan Southern Railway Company.

William Ellis and *F. G. Wright* for Chicago, Milwaukee & St. Paul Railway Company.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

On December 7, 1907, complainant shipped 45,400 pounds of steel from Buffalo, N. Y., to Watertown, Wis. Application of the published through rate then in force, of 30 cents per 100 pounds, resulted in an aggregate charge of \$136.20. At the same time, however, there were in effect over defendants' lines rates of 16½ cents from Buffalo to Chicago and 5 cents from Chicago to Watertown, making a combination of 21½ cents between the points of origin and destination. Reparation is claimed in the sum of \$38.59, based upon the difference between the through rate of 30 cents and the combination rate of 21½ cents. On January 9, 1907, prior to the date when this complaint was filed, defendants established a through rate of 21½ cents, equal to the combination of the locals based upon Chicago. On July 1, 1907, the rate from Buffalo to Chicago was advanced from 16½ to 18 cents and the joint through rate from Buffalo to Watertown increased to 23 cents. The advance from 16½ to 18 cents was part of a general advance in the rates on steel products from the east to Chicago, and increased the Buffalo rate from 21½ to 23 cents to numerous points in the neighborhood of Watertown, which the 5-cent rate from Chicago was applicable.

At the hearing defendants admitted that the through rate in force when the shipment moved should not have been higher than the combination of the locals, or 21½ cents, and, in accordance with the general principle that in the absence of satisfactory explanation a through rate in excess of the combination of the locals is unreasonable, we find that the rate exacted was unlawful to the extent that it exceeded 21½ cents per 100 pounds and that complainant is entitled to reparation in the sum of \$38.59, with interest. An order will be entered accordingly.

16 I. C. C. Rep.

No. 1689.

HUTCHINSON-McCANDLISH COAL COMPANY

v.

BALTIMORE & OHIO RAILROAD COMPANY ET AL

Submitted February 17, 1909. Decided June 8, 1909.

Exaction of demurrage charges upon certain shipments of complainant's coal detained at St. George, Staten Island, N. Y., during February, 1908, found not to have been unreasonable.

John M. Frame for complainant.

Wm. A. Parker for defendants.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

In this proceeding complainant seeks to recover \$1,088 exacted by defendants as demurrage upon shipments of coal from the Fairmont district in West Virginia to St. George, Staten Island, N. Y., during February, 1908.

It appears that complainant entered into a contract with the New York, New Haven & Hartford Railroad Company, hereinafter known as the New Haven road, for the sale of 75,000 tons of bituminous coal, to be delivered free on board boats at St. George in shipments ranging from 5,000 to 6,000 tons per month during the year from April 1, 1907, to April 1, 1908. The transportation of this coal via defendants' lines required the use of about 156 cars per month, the number of shipments varying from month to month, according to the needs of the consignee.

The rules under which the demurrage was computed are as follows:

The date of the arrival of the car shall be subtracted from the date unloaded; the difference between these dates will constitute the total detention to the car. From the total of the days' detention to all cars thus obtained:

(a) Deduct the number of Sundays and legal holidays, but not half holidays, intervening between the date of arrival of car and the date unloaded.

(b) Deduct the number of days on hand intervening between the date of arrival of the vessel and the date the car is unloaded, excluding the Sundays and legal holidays allowed for under paragraph (a) if any.

(c) Also deduct five days' free time allowance for each car.

(d) After making the deductions provided above, the remainder, if any, will be the number of days for which the consignee will be charged.

(e) The date of vessel arrival shall be the date a vessel is registered at the pier office for the cargo of which the coal or coke dumped is a part.

Defendants' tariffs also contained a provision permitting shippers to enter into a so-called average demurrage agreement by which demurrage might be computed on the basis of five free days for all cars instead of upon each individual car, and complainant entered into such an agreement.

Complainant does not contend that these demurrage rules are in themselves unreasonable, but asserts in substance that because of the inability of defendants to unload cars promptly during February, 1908, the demurrage charge in question should not be enforced. Between January 22 and February 27, 1908, complainant made no shipments under its contract with the New Haven road, having been notified by that company about the middle of January to stop shipping until further orders. About January 25, after complainant had ceased shipping, very severe weather set in and continued until about the 15th of February. Extremely cold weather, such as occurred during this period, freezes the coal into a more or less solid mass in the cars, making the unloading difficult and expensive, seriously interfering with the dumping facilities and, in effect, minimizing the capacity of the unloading plant. In fact, very severe weather virtually prevents the operation of the plant, as the coal has then to be loosened and removed from the car by hand labor. Under favorable conditions the facilities at St. George were capable of unloading from 175 to 200 cars per day, and the agreement for carriage of the coal from Fairmont to St. George included the duty of transshipping or dumping the coal into barges to be provided by the consignee. Complainant contends that owing to the inability of the railroad company to unload cars of coal, due to the severe weather, the New Haven road did not send barges to the terminal at St. George until weather conditions were such that the barges could be promptly loaded. Defendants maintain on the other hand that the demurrage accrued by reason of the failure of the New Haven road to supply barges at St. George—and this appears to be the fact—since under defendants' demurrage rules the demurrage ceases when the barge is registered at the wharf. That is to say, as soon as a barge registers at the wharf the number of carloads of coal which it will contain are immediately "matched off" against it and demurrage upon such carloads ceases regardless of the time when the railroad company may actually unload the coal into the barge. It is also apparent from the testimony that during at least a portion of the month of February the defendants, by reason of weather conditions,

were unable to load barges promptly. Therefore the sole question presented is whether under the circumstances it was reasonable to assess the demurrage in controversy.

As has been stated, if barges sufficient in number to accommodate complainant's shipments had been sent to the piers at St. George they would have been matched against the cars and no demurrage would have accrued. It is intimated by defendants that the real reason why barges were not furnished was that the terminals of the New Haven road were congested at this time and it therefore did not desire to receive any further shipments of coal. At any rate, under the contract in question it seems not to have been within the power of complainant to provide barges and the best he could do was to urge the New Haven road to furnish them. In other words, complainant had assumed liability for whatever demurrage charges might accrue without reserving to itself control of the means by which those demurrage charges could be avoided. What complainant contends for in effect is a rule that shall prevent the assessment of demurrage upon a showing that it might have had boats at the wharf but did not furnish them because it knew they would not be loaded.

It seems clear from the record that complainant voluntarily accepted an average demurrage agreement on basis of five free days per car; that it entered into a contract with the New Haven road for boats, and that it knew that demurrage would accrue under the agreement unless boats were tendered and cars matched against them. It is also true that if boats had been furnished promptly and in sufficient number to accommodate complainant's shipments prior to the date when severe weather set in and prevented prompt unloading of the cars, a great portion of the demurrage in question would have been avoided.

Our conclusion is that a case has not been presented which justifies an order for relief. There are serious objections to such a change in the rule as is contended for by complainant. It would make the assessment of demurrage charges more or less a matter of uncertainty rather than of accurate determination. Under such a rule it would be necessary in each case for some one to decide whether a carrier would have unloaded the cars if boats had been furnished and whether the consignee would have furnished the boats if the carrier could have filled them. The carrier could in any case remit demurrage by simply declaring that it could not have loaded the boats if they had been furnished. In the present instance the demurrage would not have accrued, in spite of the carriers' difficulties, if boats had been supplied. Moreover, as has been noted, complainant was not in a position to furnish the boats itself, and the best it could do was to urge its consignee to send them. Apparently such a ruling

as complainant asks would also make an assessment of demurrage charges dependent upon whether the consignee did or did not desire at a particular time to accept coal which had been shipped to it. While it is suggested that the furnishing of boats during this severe weather would have involved useless expense by reason of detention of the boats, this expense, so far as we are informed by the record, would have fallen upon the consignee and not upon complainant. We are not convinced from the showing made that the demurrage rules in question are unreasonable. They could have been avoided either by due effort on complainant's part in limiting its shipments during the severe weather, or by securing boats sufficient to match the number of cars which had reached St. George. An order will be entered dismissing the complaint.

16 I. C. C. Rep.

No. 2194.

A. L. THOMAS

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
ET AL.

Submitted March 5, 1909. Decided June 8, 1909.

Rate of 21 cents per 100 pounds for transportation of potatoes, in carloads, from Pound, Wausaukee, and Beaver, Wis., to Painesdale, Mich., found unreasonable to the extent that it exceeded 15 cents per 100 pounds, the rate in force prior to October 12 and subsequent to November 10, 1908. Reparation awarded.

A. L. Thomas for complainant in person.

William Ellis for Chicago, Milwaukee & St. Paul Railway Company.

F. R. Bolles for Copper Range Railroad Company.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

From May 13, 1903, to October 12, 1908, defendants had in force a joint tariff providing a rate of 15 cents per 100 pounds for the transportation of potatoes, in carloads, from Green Bay, Wis., to Painesdale, Mich., and by a long-and-short haul provision of the tariff the 15-cent rate was made applicable from Pound, Wausaukee, and Beaver, Wis., points intermediate between Green Bay and Painesdale. By Supplement 58 to said tariff, effective October 12, 1908, the long-and-short haul provision was canceled, leaving in force a rate of 21 cents per 100 pounds upon potatoes from Pound, Wausaukee, and Beaver to Painesdale. By tariff I. C. C. No. B-1317, effective November 10, 1908, the 15-cent rate was made to apply specifically from the points named. Defendants admit that the 21-cent rate in force between October 12 and November 10, 1908, was unreasonable. During that period complainant shipped to Painesdale from Pound one carload of potatoes weighing 30,300 pounds, from Wausaukee one carload weighing 30,000 pounds, and from Beaver one

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carload weighing 30,400 pounds, and the application of the 21-cent rate to said shipments resulted in an aggregate charge of \$190.47. By complaint filed March 5, 1909, reparation is asked in the sum of \$54.42, that amount representing the difference between the 21-cent rate and the 15-cent rate, in force prior to October 12 and subsequent to November 10, 1908, as applied to the shipments in question.

Upon the facts disclosed by the record we find that the 21-cent rate in force between October 12 and November 10, 1908, was unreasonable to the extent that it exceeded 15 cents per 100 pounds, and that complainant is entitled to reparation in the sum of \$54.42, with interest. An order will be entered accordingly.

16 I. C. C. Rep.

No. 1710.

STOCK YARDS COTTON & LINSEED MEAL COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
ET AL.

Submitted March 22, 1909. Decided June 8, 1909.

Upon complaint based upon the exaction by defendants of a through rate of 33½ cents per 100 pounds upon oil meal in carloads from Minneapolis, Minn., to Milo, Mo., while the combination of local rates based upon Kansas City amounted to only 18 cents; *Held* That the higher through rate is unreasonable to the extent that it exceeds 18 cents per 100 pounds. Reparation awarded.

Fred L. Cook for complainant.

F. G. Wright and *William Ellis* for Chicago, Milwaukee & St. Paul Railway Company.

D. R. Lincoln for Missouri Pacific Railway Company.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

Complainant is a Missouri corporation engaged in business at Kansas City. In February, 1908, defendants carried for it one carload of oil meal, weighing 30,000 pounds, from Minneapolis, Minn., to Milo, Mo. The only joint through rate applicable to this transportation was the Class B rate of 33½ cents per 100 pounds, which resulted in a charge of \$100.50. At the same time the defendant, the Chicago, Milwaukee & St. Paul Railway Company, published a commodity rate on oil meal in carloads from Minneapolis to Kansas City of 10½ cents per 100 pounds, and the defendant, the Missouri Pacific Railway, published a rate on the same commodity from Kansas City to Milo of 7½ cents, making the combination of local charges based on Kansas City via the route over which the shipment moved 18 cents per 100 pounds. Complainant alleges that the joint through rate was unreasonable and asks reparation upon the basis of the combination upon Kansas City. At the hearing defendants stated that they were willing to make reparation upon the basis of the Kansas City

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combination, and offered no evidence to justify the existence of a through rate in excess thereof. We find, therefore, that the through rate of 33½ cents was unreasonable; that the rate for the future ought not to exceed 18 cents per 100 pounds, and that complainant is entitled to reparation in the sum of \$46.50, with interest, that amount representing the difference between the rates of 33½ cents and 18 cents as applied to the shipment in question. An order will be entered accordingly.

Complainant attempted to secure the application of the two local rates to this shipment by billing it first to Kansas City and then requesting the Milwaukee road to collect the charges up to Kansas City, deliver the car to the Missouri Pacific for carriage to Milo, and to secure a new bill of lading from Kansas City to Milo. The Milwaukee road, instead of complying with this request, corrected the billing to read from Kansas City to Milo and applied the through rate applicable to a through movement. In this regard defendant's action was proper, as a shipper can not defeat the application of a joint through rate by constituting the carrier its agent to collect charges up to the junction point and reship the traffic to final destination.

16 I. C. C. Rep.

No. 2243.

OTTUMWA PICKLE COMPANY

v.

CHICAGO MILWAUKEE & ST. PAUL RAILWAY COMPANY.

Submitted March 22, 1909. Decided June 8, 1909.

Reparation awarded complainant on shipment of one carload of pickles from Ottumwa, Iowa, to Kansas City, Mo.

H. W. Merritt for complainant.

William Ellis for defendant.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

On October 7, 1908, complainant shipped over defendant's line from Ottumwa, Iowa, to Kansas City, Mo., a carload of pickles, weighing 36,200 pounds, and on October 28, 1908, another carload of pickles, weighing 45,300 pounds. The rate lawfully applicable to these two shipments was defendant's fifth class rate of 22 cents per 100 pounds, which resulted in an aggregate charge of \$179.30. At the same time the Chicago, Burlington & Quincy Railway Company had in force a commodity rate of 14½ cents per 100 pounds for the transportation of pickles, in carloads, from Ottumwa to Kansas City, and defendant's agent solicited the shipment upon the assumption that his road published the same rate.

Prior to the filing of this complaint, by tariff effective January 2, 1909, defendant established a rate of 14½ cents per 100 pounds for the transportation of pickles, in carloads, from Ottumwa to Kansas City. It admits that the 22-cent rate was unreasonable, and indicates its willingness to make reparation upon the basis of the rate now in force. Upon this record we find that the 22-cent rate was unreasonable to the extent that it exceeded 14½ cents per 100 pounds, and that complainant is entitled to reparation in the sum of \$61.12, with interest, that amount representing the difference between said rates of 22 cents and 14½ cents per 100 pounds as applied to the shipments in question. An order will be entered accordingly.

16 I. C. C. Rep.

No. 1753.

NORTHERN COAL & COKE COMPANY

v.

COLORADO & SOUTHERN RAILWAY COMPANY ET AL.

Submitted April 9, 1909. Decided June 8, 1909.

Defendants ordered to establish through routes and joint rates on lignite coal from Louisville, Colo., via Denver, to points reached by the Chicago, Rock Island & Pacific Railway in Kansas, Nebraska, Missouri, Iowa, and Oklahoma.

Bartels, Blood & Bancroft for complainant.

E. E. Whitted for Colorado & Southern Railway Company.

E. B. Peirce and *M. L. Bell* for Chicago, Rock Island & Pacific Railway Company.

Chester M. Dawes and *Vaile, McAllister & Vaile* for Chicago, Burlington & Quincy Railroad Company, intervener.

C. W. Durbin for Cedar Hill Coal & Coke Company et al., interveners.

REPORT OF THE COMMISSION.

LANE, Commissioner:

The complainant is a Colorado corporation engaged in operating coal mines at Louisville, Colo., on the Colorado & Southern Railway, 20 miles northwest of Denver.

Complaint is directed against the aggregate charges now exacted by defendants for the transportation of lignite coal from Louisville to points on the line of the Chicago, Rock Island & Pacific Railway (hereinafter designated as the Rock Island road) in the states of Kansas, Nebraska, Missouri, Iowa, and Oklahoma, it being alleged that said rates unjustly discriminate against complainant and other shippers of coal from Louisville and give undue preference to coal operators shipping from Roswell, Colo., a local point on the Rock Island, 4 miles northeast of Colorado Springs. The prayer of the petition is for the establishment of through routes and reasonable joint rates for the transportation of coal from Louisville to the Rock Island points in question. The intervener, Chicago, Burlington & Quincy Railroad Company, opposes the establishment of such routes

and rates to Nebraska points common to the Burlington and Rock Island roads for the reason that the Burlington, in conjunction with the Colorado & Southern from Louisville, now affords a reasonable and satisfactory through route and joint rates to such points. These are, however, but 12 in number, viz: Omaha, Lincoln, Beatrice, Fairbury, South Bend, Pawnee, De Witt, Thompson, Hebron, Nelson, Havelock, and Rockford.

The Rock Island line from Colorado Springs joins the main line from Denyer at a point called Limon, which is 76 miles from Roswell, 109 miles from Louisville, and 179 miles from the mines at Walsenburg.

The following statement shows in the last 3 columns existing rates in cents per net ton and in mills per ton per mile; also the distances from Louisville to various points in the states referred to. The table shows also the fluctuations in these rates during the period from January 1, 1902, to January 20, 1909.

Rates per net ton on coal from Louisville, Colo., to typical Rock Island points, from January 1, 1902, to January 20, 1909.

Station.	Jan. 1, '02, to Nov. 9, '03.	Nov. 10, '03, to Dec. 16, '03.	Dec. 17, '03, to Feb. 12, '05.	Feb. 13, '05, to Mar. 31, '05.	Apr. 1, '05, to May 14, '05.	May 15, '05, to Aug. 12, '06.	Aug. 13, '06, to July 22, '08.	July 23, '08, to Jan. 20, '09.	Dis- tance.	Rate per ton per mile.
									Miles.	Mills.
Council Bluffs, Iowa	\$3.50	\$4.30	\$3.50	\$3.30	\$3.00	\$3.50	\$3.00	\$3.30	604	5.5
Omaha, Nebr.....	3.50	4.30	3.50	3.30	3.00	3.50	3.00	3.30	599	5.5
South Bend, Nebr..	3.50	4.30	3.50	3.30	3.00	3.50	3.75	4.05	572	7.1
Havelock, Nebr.....	3.50	4.30	3.50	3.30	3.00	3.50	3.75	4.05	546	7.4
Lincoln, Nebr.....	3.50	4.30	3.50	3.30	3.00	3.50	3.00	3.30	541	6.1
De Witt, Nebr.....	3.50	4.30	3.50	3.30	3.00	3.50	3.75	4.05	507	8.0
Fairbury, Nebr.....	3.50	4.30	3.50	3.30	3.00	3.50	3.75	4.05	484	8.4
Hebron, Nebr.....	3.50	4.30	3.50	3.30	3.00	3.50	3.75	4.05	508	8.0
Nelson, Nebr.....	3.50	4.30	3.50	3.30	3.00	3.50	3.75	4.05	545	7.6
Thompson, Nebr....	3.50	4.30	3.50	3.30	3.00	3.50	3.75	4.05	477	8.5
Phillipsburg, Kans..	3.25	4.30	3.50	3.30	3.00	3.50	3.50	3.80	356	10.7
Colov, Kans.....	2.90	4.20	3.50	3.30	3.00	3.50	3.15	3.45	272	13.7
Kamorado, Kans....	2.65	3.80	3.00	3.00	3.00	3.00	2.90	3.20	199	16.1
St. Joseph, Mo.....	3.50	4.25	3.75	3.75	3.75	3.75	3.75	4.05	641	6.3
Fairview, Kans....	3.50	4.55	3.75	3.75	3.75	3.75	3.75	4.05	582	7.0
Pawnee, Nebr.....	3.50	4.30	3.50	3.50	3.50	3.50	3.75	4.05	559	7.4
Rockford, Nebr....	3.50	4.30	3.50	3.50	3.50	3.50	3.75	4.05	520	7.7
Beatrice, Nebr.....	3.50	4.30	3.50	3.50	2.50	3.50	3.75	4.05	511	7.8
Kansas City, Mo....	3.50	4.25	3.75	3.75	3.75	3.75	3.75	4.05	656	6.2
Topoka, Kans.....	3.50	4.55	3.75	3.75	3.75	3.75	3.75	4.05	588	6.9
Clay Center, Kans..	3.25	4.30	3.50	3.50	3.50	3.50	3.50	3.80	498	7.6
Salina, Kans.....	3.25	4.30	3.50	3.50	3.50	3.50	3.50	3.80	653	5.8
Ramona, Kans.....	3.35	4.05	3.25	3.25	3.25	3.25	3.60	3.90	611	6.4
Hutchinson, Kans..	3.35	4.05	3.25	3.25	3.25	3.25	3.60	3.90	677	5.8
Pratt, Kans.....	3.35	4.05	3.25	3.25	3.25	3.25	3.60	3.90	740	5.3
Dodge City, Kans...	3.35	4.50	3.50	3.50	3.50	3.50	3.60	3.90	807	4.8
Tyrone, Okla.....	3.45	4.40	3.50	3.50	3.50	3.50	3.70	4.00	871	4.6
White Water, Kans.	3.35	4.05	3.25	3.25	3.25	3.25	3.60	3.90	655	6.0
Wichita, Kans.....	3.35	4.05	3.25	3.25	3.25	3.25	3.60	3.90	677	5.8
Perth, Kans.....	3.35	4.05	3.25	3.25	3.25	3.25	3.60	3.90	715	5.4
Cropper, Okla.....	3.60	4.15	3.35	3.35	3.35	3.35	3.85	4.15	781	5.3
Isabel, Okla.....		4.45	3.65	3.65	3.65	3.65	4.15	4.45	800	5.5
Apache, Okla.....	4.40	4.95	4.15	4.15	4.15	4.15	4.65	4.95	911	5.4
Hastings, Okla.....		5.20	4.40	4.40	4.40	4.40	4.90	5.20	987	5.4
Kingfisher, Okla....	3.80	4.35	3.55	3.55	3.55	3.55	4.05	4.35	811	5.3
El Reno, Okla.....	3.95	4.50	3.70	3.70	3.70	3.70	4.20	4.50	875	5.4
Fort Cobb, Okla....	4.40	4.95	4.15	4.15	4.15	4.15	4.65	4.95	901	5.5

The rates shown as in effect between July 23, 1908, and January 20, 1909, are made up of the Colorado & Southern local from Louisville to Denver (at which point shipments to stations on the Rock Island are turned over to that road), added to the rate named by the Rock Island to apply from Denver to destinations.

Identical rates apply from Roswell and Denver to points in the states of Kansas, Nebraska, Missouri, Iowa; and Oklahoma. We insert here a table showing the rates from Roswell and Denver to representative points in the states named:

Rates per net ton on coal from Roswell and Denver.

To—	Lump.	Mine-run.	Slack.
Council Bluffs, Iowa; Omaha and South Omaha, Nebr.....	\$2.50	\$2.50	\$2.50
Lincoln, Nebr.....	2.50	2.50	2.25
Fairbury, Nebr.....	3.25	2.75	2.25
Gladstone, Nebr., to Nelson, Nebr., inclusive.....	3.25	2.75	2.25
Belleville, Kans.....	3.00	2.75	1.80
Lebanon, Kans., to Gretna, Kans., inclusive.....	3.00	2.50	1.80
Colby, Levant, and Brewster, Kans.....	2.65	2.50	1.60
Kanorado, Kans.....	2.40	2.40	1.44
St. Joseph, Mo., to Pierce Junction, Kans.....	3.25	2.75	2.75
Kansas City, Mo., and Armourdale, Kans.....	3.25	2.75	2.25
Alma, Kans., to Salina, Kans., inclusive.....	3.00	3.00	3.00
Ramona, Kans., to Liberal, Kans., inclusive.....	3.10	3.10	3.10
Ford City, Wilroads, and Dodge City, Kans.....	3.10	3.10	3.10
Tyrone, Okla.....	3.20	3.20	3.20
Jefferson and Pond Creek, Okla.....	3.25	3.25	3.25
Ringwood, Isabella, and O'Keene, Okla.....	3.65	3.65	3.65
Apache, Okla.....	4.15	4.15	4.15
Lawton, Okla.....	4.30	4.30	4.30
Dover, Okla.....	3.50	3.50	3.50
El Reno, Okla.....	3.70	3.70	3.70
Sam Lee, Okla., to Lindsay, Okla., inclusive.....	4.00	4.00	4.00
Anadarko, Okla.....	4.05	4.05	4.05
Hobart, Okla.....	4.40	4.40	4.40
Mangum, Okla.....	4.55	4.55	4.55

Formerly, during the period from December 17, 1903, to August 13, 1906, through rates were in effect over defendants' lines to many of the points in question. On the latter date these were canceled and the Colorado & Southern established and maintained until July 23, 1908, a proportional rate of 50 cents per ton from Louisville to Denver on coal destined to Rock Island points. On the latter date that road canceled this rate and has since applied its local rate of 80 cents per ton from Louisville to Denver on lump and mine-run coal, and 60 cents per ton on slack coal, whether such shipments are consigned locally to Denver or destined to Rock Island points on through billing. The Roswell rate being identical with that applied from Denver, as already shown, the rate from Louisville to Rock Island points is thus higher than that from Roswell by the amount of the local from Louisville to Denver, or 80 cents per net ton.

Coal produced at complainant's mines is a low-grade lignite, which slacks if stored and which must therefore be consumed within a short time after it is mined. However, coal from the Rapson mine at Ros-

well is somewhat inferior in quality to the Louisville product, the latter being preferred where it can be had for the same price.

Coal produced by interveners, Cedar Hill Coal & Coke Company, and other operators in the Walsenburg district is a high-grade bituminous product, suitable for domestic use and a favorite in competitive markets in Kansas and Nebraska at about \$1.25 per ton more than lignite. However, notwithstanding the superiority of the Walsenburg over this lignite coal, rates from Walsenburg via the Rock Island to points on that line, other than Omaha and Lincoln, Nebr., and Council Bluffs, Iowa, are lower than from Louisville. To points on the Chicago, Burlington & Quincy Railroad the Walsenburg rates are 50 cents per ton higher than rates from Louisville; to points on the Union Pacific main line as far east as Grand Island, Nebr., rates from Walsenburg are 25 cents per ton higher than from Louisville; and to points on the Union Pacific in Kansas \$1.10 per ton higher.

Walsenburg coal retails in Denver at about \$6 per ton and lignite coal from complainant's mines at \$3.75, whereas the latter coal sells f. o. b. Lincoln and Omaha for \$5.50 per ton, and Roswell coal competes at these last two points at \$4.75 per ton. The mine price of Roswell coal is about \$2.25 per ton when for shipment to Rock Island points. Denver constitutes the best market for complainant's output, and \$2.55 per ton is the highest mine price ever obtained for coal sold in that market.

Complainant asks for the establishment of joint rates from Louisville which shall in no case exceed those in effect from Roswell, and the rates specifically prayed for in the petition are in many instances lower than the Roswell rates. The prayer in the petition also looks to the establishment in many cases of lower rates on mine-run and slack than on lump coal. The interveners, Cedar Hill Coal & Coke Company and other Walsenburg mine operators, ask that Louisville be not accorded a differential under the Walsenburg rates of more than 25 cents per ton and protest against the establishment of a lower rate on mine-run than on lump coal.

Complainant filed an exhibit showing that since the rate of 80 cents from Louisville to Denver has been applied on through shipments to Rock Island points it had been possible to sell but 7 carloads of coal from its Louisville mines at points in Nebraska and Kansas on the Rock Island road. The daily capacity of complainant's mines at Louisville is about 2,650 tons. These mines are not now operated to their full capacity, the same being true as to practically all mines in Colorado.

From November 10, 1903, to April 2, 1904, the Roswell rates were the same as those in effect from Louisville. Since the latter date they have been lowered for the reason, complainant alleges, that

this is the only coal-producing field in Colorado located on the Rock Island lines, and consequently the lower rates accorded from Roswell have been in pursuance of the policy of that road to develop its local industries irrespective of whether or not in so doing it discriminates against operators on other lines. It is conceded by complainant that were the Louisville rate lowered to the level of the Roswell rate its coal would to a great extent displace Roswell coal at Rock Island points.

The production of the Rapson mines at Roswell is about 4 per cent of that of the mines producing lignite coal in northern Colorado.

In the opinion of the Commission, the local rate of 80 cents per net ton on lignite coal from Louisville to Denver, as applied on through traffic to the Rock Island points referred to, is unjust and unreasonable. This charge covers a haul of 20 miles as a part of through hauls of several hundred miles on coal of an inferior grade. Defendants admit that the same is too high and express a willingness to republish a proportional rate of 50 cents per net ton for that part of the haul from Louisville to Denver to apply on through traffic to Rock Island points. We think even this rate would be unreasonable for that service and that joint rates should be established by defendants to apply on through traffic from Louisville to the various points reached by the line of the Rock Island in Kansas, Nebraska, Missouri, Iowa, and Oklahoma which shall in no case exceed the rate in effect via the Rock Island from Denver and Roswell by more than 40 cents per net ton. The through rate so constructed may be apportioned between the Colorado & Southern and Rock Island companies on any basis for divisions which those carriers may deem proper. The Commission is not called upon at this time to express any opinion concerning that phase of the matter.

As the rates from Denver and Roswell are lower in many instances on mine-run and slack than on lump coal, we think the adjustment from Louisville should be made on a similar basis in order to remove the unjust discrimination against coal operators at that point. In our opinion the rates so constructed will be entirely fair to the interested carriers.

No. 2105.

D. E. WOOD BUTTER COMPANY

v.

CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAIL-
WAY COMPANY ET AL.

Submitted April 26, 1909. Decided June 8, 1909.

Under the circumstances in this case complainant was properly assessed the joint through rate on its shipments of butter from Wellington, Ohio, to Evansville, Wis., rather than the sum of the locals based on Chicago. Complaint dismissed.

B. S. Pearsall for complainant.

R. J. Cary for Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

S. A. Lynde for Chicago & North Western Railway Company.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

In the month of July, 1907, complainant purchased 2 carloads of butter at Wellington, Ohio, and consigned them to itself at Chicago, Ill. Upon the arrival of the cars at Chicago, via the Cleveland, Cincinnati, Chicago & St. Louis, they were reconsigned to complainant's factory at Evansville, Wis., via the Chicago & North Western. The local rate from Wellington to Chicago was 35 cents per 100 pounds and the local rate from Chicago to Evansville was 30.8 cents, making the combination 65.8 cents. At the same time there was a through rate (second class, J. F. Tucker's I. C. C. No. 12) of 71 cents per 100 pounds—Wellington to Evansville. When the first car arrived at Chicago complainant sent a check for the amount of the freight at 35 cents per 100 pounds, Wellington to Chicago, to the agent of the Cleveland, Cincinnati, Chicago & St. Louis at Chicago. The agent of complainant was informed on tender of the check that an icing charge of \$4.50 followed the billing. He was also informed that the entire charges could follow the shipment to Evansville and payment could be made there, and to this arrangement complainant agreed. On the arrival of the second car at Chicago complainant

merely reconsigned it to Evansville, with charges to follow. Complainant paid 71 cents, the through rate, and presented claim to the Chicago & North Western for a reduction to the combination of local rates, which claim was refused.

Complainant alleges in its complaint that the through rate is unreasonable because in excess of the combination, and reparation in the sum of \$27.98 is asked.

At the hearing, however, complainant's representative stated that it was not complainant's purpose to charge that the through rate was unreasonable. No proof would be offered on that subject, and no claim was intended to be made of that character. It was stated that complainant's real claim is that the shipments passed into its possession at Chicago, and it is therefore entitled to the local rate in and to the local rate out on reshipment. It is well settled that a shipper has the right to consign a shipment to a given point, pay charges upon it, assume custody and take possession of the property, and later reship it to another point under rates lawfully applicable to such shipment. *Morgan et al. v. Mo. Kan. & Tex. Ry. Co. et al.*, 12 I. C. C. Rep., 525, 528. As a matter of fact, however, neither of the shipments in controversy passed into the possession of complainant at Chicago. It did not pay the freight charges at that point nor in any manner assume custody of the property. Under such circumstances the carriers were bound to apply the through rate to the shipment when it arrived at Evansville. It appears that the agent of the Cleveland, Cincinnati, Chicago & St. Louis at Chicago was in error in stating that there were icing charges following the billing, but this does not in any way relieve complainant. The reduction of the property to complainant's possession at Chicago was a condition precedent to the lawful application of the combination to the shipments. Complainant's contention is that it intended to take possession of the shipments, and sent an agent with a check for that purpose. Mere intention can not be allowed to control in cases of this character. What was actually done must govern. The defendants stated at the hearing that they were willing to admit for the purposes of this case that the shipments did pass into complainant's possession at Chicago, and were willing that the combination rates might be applied. They denied, however, that the second class rate from Wellington to Evansville is unreasonable, and no evidence was submitted with respect of the reasons for the fixing of the local rates between the points in question.

The facts clearly demonstrate that the first shipment did not pass into possession of the complainant at Chicago, and there is no pretense that the second was reduced to such possession. Under this state of facts, claimant having waived any charge with respect of the reasonableness of the through rate exacted of him, no order for reparation can properly be made. The complaint will be dismissed.

No. 2571.
EDWARD G. DAVIES
v.
ILLINOIS CENTRAL RAILROAD COMPANY.

Decided June 8, 1909.

The defendant's tariff provided estimated weights for cabbages when shipped in so-called standard crates theretofore in use in the cabbage traffic, but it appears that during the spring of 1908 shipments from Louisiana and Mississippi points to Chicago were made in crates of other dimensions; *Held*, Upon the special facts shown of record, that the complainant is liable for, and the defendant may lawfully collect, freight charges at the published rate per 100 pounds on the actual weight of such shipments as were received by the complainant during the period in question, estimated, as was done, by weighing a number of crates in each shipment and thus ascertaining the average weight per crate. Defendant criticised for not having revised its tariffs to conform to the changed conditions.

Edward G. Davies for complainant in person.

Blewett Lee for defendant.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

Under a stipulation by the parties orally made to the Commission, the question involved in this proceeding is submitted for our decision on the testimony offered of record and without formal pleadings. The controversy involves the meaning of a rule in the tariffs of the defendant, the purpose of which was to establish a basis for determining the weight of shipments of cabbages in crates from points in the states of Mississippi and Louisiana to Chicago, in the state of Illinois. Edward G. Davies, a commission merchant dealing in fruits, vegetables, and general produce at Chicago, is on one side of the dispute, and for convenience of reference is herein referred to as the complainant. On the other side is the Illinois Central Railroad Company, the lines of which reach Chicago and also serve the territory in which originated the shipments embraced in the controversy. For convenience that company is herein referred to as the defendant. The proceeding has been entitled accordingly.

It appears that so long ago as 1899 the defendant, in order to avoid the expense and delay of weighing each particular shipment, instituted a thorough investigation of the average weight of the several sizes of crates then in use in the cabbage traffic between the points in question; and as a basis for assessing its freight charges, established certain estimated weights for each of such different sizes. The tariff rule then promulgated, and which was in effect at the time the shipments in question were made, is as follows:

Rule 14. Estimated weights. Shipments of the following will not be weighed on track scales. Waybill at the following estimated weights.

And among other vegetables and fruits it specified—

Cabbages:	Pounds.
Standard crate.....	160
Two-thirds standard crate.....	125
One-third standard crate.....	60
Huber crate, 16 x 16 x 30 inches.....	115

The record shows that crates of four different sizes were in common use at the time this tariff rule was published and were known in the cabbage trade under the designations appearing in this tariff; but it will be observed that no dimensions are prescribed in the rule for any of the crates so designated except the Huber crate. It is to be inferred from the record that these crates were recognized as standard for some years, and that crates of no other size were in general use. The difference in size was sufficient to enable the railroad employees to know at a glance to which class the crates in a particular shipment belonged, and they were thus able to assess the freight charges accordingly.

In the progress of time, however, various motives led the producers of cabbages to demand of the manufacturers crates of other dimensions. It is intimated that this was done, at least by some producers or shippers, for the purpose of defrauding the consumers, the variation in size not being enough to be readily detected by them. It was also stated at the hearing that shippers got into the habit of packing their cabbages more and more loosely, particularly when the market price was high, and as a consequence of this practice the crate manufacturers reduced the sizes of the crates. These statements are too general in character to justify findings to that effect, and we do not understand that they relate to the complainant or in any way involve his good faith. But the result was that the measurements of the standard crates were gradually lost sight of, so that at the time referred to here the estimated weights assigned in the defendant's tariffs to the several so-called standard crates no longer afforded an accurate basis upon which to assess freight charges on the crates actually in use. The defendant's attention was particularly directed

during the year 1907 to a change in the size of the crates then being received by it. But instead of modifying its tariffs and thus eliminating all ambiguity and doubt from the situation, it simply discontinued assessing its charges on estimated weights as provided in the rule, and began the practice of weighing a certain number of crates in each shipment and the average weight of the crates thus weighed, multiplied by the total number of crates in the consignment, gave the defendant an estimated actual weight of the shipment. The record is not free from doubt as to just when this change in the method of assessing freight charges was first begun, whether in the year 1907 or 1908. But we regard it as clear that during the latter year all shippers except the complainant paid freight charges on the estimated actual weight of their cabbage shipments ascertained in this manner.

The complainant objected to this course and declined to pay the charges demanded by the defendant on shipments received by him during the spring of 1908 and until July 1 of that year, when the original rule in the defendant's tariffs providing an estimated weight for each of the so-called standard crates was canceled, and a rule was published providing for the ascertainment of the actual weight of a shipment in the manner just described. This rule was followed throughout the remainder of the period involved in this proceeding as to all shipments except those made in the so-called Huber crates.

The case was twice set for hearing. Crate manufacturers, cabbage shippers, railroad officials, and commission merchants appeared and gave their testimony. The record discloses, as is believed, all the information on the subject that is obtainable. We have given it careful and exhaustive study, and from all the testimony we gather the following additional facts:

There seems to be little doubt that when the tariff provision in question was first published it was based upon a general understanding that the so-called standard crate then in use measured 18 by 18 by 36 inches, these being its outside dimensions. Crates of those dimensions were recognized and known as standard in the cabbage traffic for a number of years. Although the record is not altogether clear on the point, the weight of the testimony seems to indicate, and we so find, that the so-called two-thirds standard crate was commonly recognized at the time the tariff rule was first published as a crate measuring 16 by 16 by 32 inches, these being also outside dimensions. It is at this point that the real dispute arises. The estimated weight assigned in the tariff of the defendant to a crate designated as two-thirds standard is 125 pounds. The complainant, although apparently conceding at one point in the testimony that his own understanding had been that a crate 16 by 16 by 32 inches on the outside

was a two-thirds standard crate at the time the tariff rule of the defendant was first published, nevertheless, at another point in the testimony, contends that the above dimensions represent the inside measurements, and that a crate measuring on the outside 17 by 17 by 34 inches is the two-thirds standard crate. His cabbage shipments during the time here involved were mostly in crates of this latter size, and he insists that the defendant's charges on them should have been assessed at an estimated weight of 125 pounds per crate. Crates of this size, as the testimony shows, vary in weight under different conditions from 125 to 170 pounds, and of course if carried at a rate based on an estimated weight of 125 pounds would give the complainant results not contemplated by the original tariff rule which assigned that weight, as heretofore stated, to a two-thirds standard crate with outside dimensions of 16 by 16 by 32 inches.

Crates are referred to in the record, as being in use at the time these shipments to the complainant were made, of the following sizes: 18 by 18 by 36 inches; 17 by 17 by 32 inches; 17 by 17 by 34 inches; 16½ by 16½ by 33 inches; 16 by 16 by 32 inches; and 16 by 16 by 30 inches. The confusion had become so general in 1907 that, apparently regardless of its size, whatever crate was used in a particular producing locality came to be regarded in that section as a standard crate. For this reason the defendant commenced to assess its charges on the actual weight of each shipment, ascertained by weighing a certain number of crates in the car, and thus arriving, as heretofore stated, at the estimated actual weight of the shipment. Witnesses for the defendant testified at the hearing, and this was not controverted by any proof offered on behalf of the complainant, that during the spring of 1908, or, in other words, during this period of confusion, doubt, and uncertainty as to what crates were standard in size, its freight charges against all shippers of cabbages were assessed on the actual weight of their shipments ascertained in this manner. It is obvious, therefore, that if the contention of the complainant be sustained, and if the defendant be required to adjust its charges on his shipments on the basis of an estimated weight of 125 pounds on the crates which had outside dimensions of 17 by 17 by 34 inches, and which he asserts were two-thirds standard crates, the result will be to put him on a preferred basis as compared with his competitors, and to accord to him rates that were not enjoyed by others. We see no basis in the record for pursuing this course or entering an order the result of which will produce such an inequality.

As is well known, there are many commodities shipped in containers or packages of fixed dimensions that are recognized as standard. These commodities are generally moved by the carriers upon

estimated weights assigned to each container or package. The sole and only purpose of adjusting rates in that manner, as we understand the practice, is to avoid the delay, expense, and labor incident to the actual weighing of each particular shipment. It is our understanding also that the estimated weights for standard containers or packages are intended to be the fair average actual weight, and are not fixed for the purpose of giving either to the shipper or to the carrier an advantage in the matter of freight charges. On the contrary, such tariffs are established, as we understand them, simply to expedite the service and minimize the labor and expense of carriage.

There is no reason for thinking that the estimated weights assigned by the defendants, under the rule in question, to cabbage crates of the three sizes then recognized as standard in the cabbage traffic were not established on the same basis. It may be conceded that cabbages vary in weight according to the season, and that a standard crate might thus weigh more during one season than during another. But the only object that may fairly be attributed to the tariff in question is that the weights assigned in it were the fair average actual weights of the several crates in use. In other words, the defendant's charges may fairly be said to have been based upon actual weight. It is clear that, had it taken prompt action when departures from the so-called standard size crates first began to appear, this complication resulting from the change in the dimensions of the crates would have been avoided; and for its failure promptly to adjust its tariffs to the new conditions the defendant is justly subject to severe criticism. But the defendant's responsibility in the premises is not a ground upon which the complainant may demand special favors or receive the benefit of rates not accorded during the same period to his competitors. He shipped cabbages and received shipments in containers that did not conform to the standards upon which the tariff rates were based. We see no reason therefore why he should object to paying charges on their actual weight, estimated in the manner heretofore explained. And in the absence of an amendment to its tariff, which was the proper course to pursue, we see no other fair or lawful basis upon which the defendant could have assessed its charges. The tariff in effect at the time the complainant's shipments were made did not provide a rate per crate of each standard size; on the contrary it provided a rate per 100 pounds of cabbages. The weights assigned to the several standard crates were used merely as a method for ascertaining the estimated aggregate weight on which to assess the rate per 100 lbs. When crates of other dimensions came to be used the

defendant simply adopted the plan of actually weighing a number of crates in each shipment as an available way for arriving at the aggregate weight of the shipment, and having done this it assessed the rate per 100 pounds authorized in its published tariff.

Without intending to be understood as in any sense excusing the defendant for not having adjusted its tariffs to meet the situation that developed in its cabbage traffic, and without intending to lay down any general rule as a precedent for similar cases in the future, for obviously cases of this nature must be considered on the special facts presented in each proceeding, we find, upon the whole record, that the defendant is entitled to collect charges upon the complainant's shipments on the basis of the actual weight, estimated in the manner hereinbefore explained, that being the basis used in assessing charges against other shippers during the period in question. We also find that the complainant is liable to the defendant upon that basis.

It will be so ordered.

16 I. C. C. Rep.

No. 1798.

ROPER LUMBER-CEDAR COMPANY

v.

CHICAGO & NORTH WESTERN RAILWAY COMPANY.

Submitted February 8, 1909. Decided June 14, 1909.

Upon all the circumstances disclosed by the record; *Held*, That the requirement which resulted in exaction by defendant of combinations of local rates upon shipments of lumber, shingles, posts, and poles concentrated by complainant at Menominee, Mich., and Marinette, Wis., was unreasonable and resulted in excessive charges for which complainant is entitled to reparation.

F. G. Trudell for complainant.

S. A. Lynde for Chicago & North Western Railway Company.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

The complainant, a Michigan corporation, operates lumber yards at Menominee, Mich., and Marinette, Wis., where it concentrates lumber, shingles, posts, and poles, and thence reships them to various points upon defendant's line. The tariffs applicable to this traffic and now in force provide that shipments of the commodities named may be dressed, sawed, or concentrated in transit and carried at through rates which are less than the combination of local charges from original point of shipment to the concentration point and the rates from that point to ultimate destination. Under the present tariffs the application of through rates with concentration privilege is secured by submitting to the railway company the expense bills for the inbound movement when the outbound shipment moves from the concentration point. Prior to October 2, 1907, the tariffs provided that through rates with transit privilege could be secured only upon condition that the shipping bill at originating point showed the ultimate destination of the shipment. The first tariff containing this condition appears to have been published in 1902; it was republished or amended from time to time, but the condition mentioned was retained in all issues down to October 2, 1907. As a matter of fact, however, the railroad company found that the condition was impracticable, for the reason that shippers who took advan-

tage of the concentration privilege frequently did not know to what point the lumber would be reconsigned until after it had been received at the concentration point; and for the further reason that the original shipper was often located at a country station or siding where there was no railroad agent, and therefore was not informed of the condition. The result was that prior to 1906, although this condition remained in the tariffs, it was generally waived and the through rate applied upon lumber concentrated and treated in transit when satisfactory evidence, such as the expense bill for inbound movement, was submitted to the railroad company. Subsequent to the passage of the amended law in 1906, however, defendant's agents were instructed to enforce strictly all tariff provisions; and thereafter, during the period when this requirement for notation of ultimate destination upon the shipping order was enforced, until it was omitted in the tariff of October 2, 1907, a number of shipments were made by complainant upon which the local charges into and out of Menominee and Marinette were applied, although these shipments were actually concentrated at those points and would have been entitled to the through rate if the final destination had been shown on the billing; and it is upon these shipments that complainant asks reparation for the difference between the charges actually collected and the through rates applicable in connection with the concentration privilege. It was admitted by defendant that this requirement for notation upon original billing was impracticable; that it was actually waived prior to 1906, and was eliminated by the tariff of October, 1907.

In view of these facts, which are practically undisputed, we find that the requirement in question was unreasonable and resulted in excessive charges for which complainant is entitled to reparation. Upon the present record the exact amount of reparation can not be determined, and it is therefore suggested that the parties check their accounts and submit to the Commission as early as may be convenient a statement showing in detail the shipments upon which reparation should be allowed and the aggregate amount of the reparation. An appropriate order will then be issued.

16 I. C. C. Rep.

No. 2041.

BLODGETT MILLING COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
ET AL.

Submitted March 18, 1909. Decided June 14, 1909.

Rate on buckwheat from Cattaraugus, N. Y., to Janesville, Wis., found unreasonable to the extent that it exceeded the combination of locals. Reparation awarded.

Frank H. Blodgett for complainant.

William Ellis and *F. G. Wright* for defendants.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

It is alleged in this complaint that the charge by defendants of 27½ cents per 100 pounds for the transportation of a carload of buckwheat from Cattaraugus, N. Y., to Janesville, Wis., was unreasonable to the extent that it exceeded 20 cents per 100 pounds, the combination of local rates in effect at the same time over the same route. Reparation in the sum of \$39.22 is asked. The shipment in question was made January 8, 1907, and weighed 52,300 pounds.

At the time this shipment moved the through rate on buckwheat in carloads from Cattaraugus to Janesville was 27½ cents per 100 pounds (C. F. A. No. 12, I. C. C. No. 12). At the same time there was in effect (Erie R. R. J. F. T. 109 D., I. C. C. No. 104) a rate from Cattaraugus to Chicago of 15 cents and from Chicago to Janesville (C. M. & St. P., I. C. C. No. A-8704) of 5 cents, making a combination of 20 cents. No evidence was submitted by defendants, and no explanation appears in the record or otherwise to justify a higher through rate than the combination of local rates. Under these circumstances the presumption is that the through rate is unreasonable, and we so find. We further find that a reasonable rate to apply to the shipment of buckwheat in carloads from Cattaraugus to Janesville should not exceed the voluntarily established combination of

local rates in effect between the points and over the lines of the defendants. Complainant is entitled to an order for reparation in the sum of \$39.22, with interest, which represents the difference between the amount actually charged and the amount that would have been charged had the combination of locals applied. An order will be entered accordingly, and the carriers will also be required to establish and maintain a rate not to exceed 20 cents per 100 pounds on the traffic in question between the points named for a period of not less than two years from August 2, 1909.



No. 1974.

MARSHALL & MICHEL GRAIN COMPANY

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY ET AL.

Submitted March 22, 1909. Decided June 14, 1909.

Reparation awarded for misrouting.

John A. Wilson for complainant.

E. B. Peirce for St. Louis & San Francisco Railroad Company.

Blewett Lee and *W. F. Dickinson* for Yazoo & Mississippi Valley Railroad Company and Gulf & Ship Island Railroad Company.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

The complainant asks reparation for overcharges, due to the misrouting of 18 carloads of corn, shipped between the dates of December 21, 1906, and March 29, 1907, from various points on the line of the St. Louis & San Francisco Railroad Company, in Missouri, Kansas, and Oklahoma, to Gulfport, Miss.

Six of the shipments covered by the complaint moved subsequent to March 18, 1907, and the defendant, Yazoo & Mississippi Valley Railroad Company, being responsible for the misrouting, has, under

Rule 70 of Tariff Circular 15-A, refunded to complainant the difference between the lawful charges via the route over which the shipments moved, and the lawful rate applicable via the cheaper available route. The complainant acknowledges, upon the record, the receipt of \$134.66, in full satisfaction of its claim for reparation on the six shipments in question. There remains for consideration the question of awarding reparation for the misrouting of the 12 cars moving prior to March 18, 1907. The reparation claimed thereon is in the sum of \$319.20.

These shipments all moved over the St. Louis & San Francisco Railroad to Memphis, Tenn., where they were delivered to the Yazoo & Mississippi Valley Railroad. The shipper gave no specific routing instructions, and it was the duty of the carriers to transport the shipments via the route carrying the lowest rate. The route available taking the lowest rate was via the Frisco to Memphis, the Yazoo & Mississippi Valley to New Orleans, and the Louisville & Nashville to Gulfport. This route was specifically named in St. Louis & San Francisco Tariff, I. C. C. No. 5025, to which all carriers last above named were parties. The Yazoo & Mississippi Valley Railroad admitted at the hearing that, through fault of its agent at Memphis, the cars were not forwarded via the route named in said tariff, but moved over its own line and the line of the Gulf & Ship Island Railroad Company, the latter at that time not being a party to said tariff. The route via the Gulf & Ship Island Railroad carried a higher rate, and complainant was subjected to the higher charges which resulted in an overcharge of \$319.20, for which the Yazoo & Mississippi Valley admits its sole liability, provided the claims are not barred by the statute of limitations. With this admission of defendant there remains to be determined the question of complainant's claims being barred.

All of the shipments except three moved within two years prior to the filing of the complaint. The three referred to moved in December, 1906. The proof, however, shows that two of the expense bills on these shipments were paid on January 12 and one on January 24, 1907. The complaint therefore was filed within two years from the time the cause of action accrued on the three shipments last referred to, and the award of reparation should be for the total amount claimed, \$319.20, with interest, for which an order will be issued against the Yazoo & Mississippi Valley Railroad Company.

16 I. C. C. Rep.

Nos. 1770, 1782, 1787, 1788, 1805, 1806, and 1807.
CEDAR HILL COAL & COKE COMPANY ET AL.
v.
COLORADO & SOUTHERN RAILWAY COMPANY ET AL.

Submitted April 12, 1909. Decided June 8, 1909.

1. Complainants contend that the blanket rates exacted by defendants for the transportation of coal from the Walsenburg fields, in southern Colorado, to points in Kansas, Nebraska, Oklahoma, Texas, and New Mexico, are unreasonable because they cover groups of points too widely separated, and because they are excessive when compared with rates on coal from points in Kansas, Iowa, Missouri, Wyoming, Illinois, Oklahoma, and Arkansas, to consuming markets; but upon consideration of the record and the circumstances and conditions affecting the coal rates from the Walsenburg district, these rates are not found to be unreasonable or unjust, and the complaints must be dismissed.
2. The chief reliance for relief in these cases is based upon comparisons of the per-ton-per-mile revenue derived by the carriers from the transportation of coal from the Walsenburg district to the various markets of consumption with the revenue per ton per mile from other coal-producing fields; but the rate-per-ton-per-mile rule excludes consideration of other circumstances and conditions which enter into the making of rates, and can not be accepted as controlling in determining the reasonableness of rates. *Gustin v. A. T. & S. F. Ry. Co. et al.* 8 I. C. C. Rep., 277, cited and approved.
3. Complainants' contentions that defendants' reconsignment rule be superseded by a rule eliminating the seventy-two-hour time limit and permitting the reconsignment of coal at any time upon the payment of a uniform charge, plus demurrage, is without merit. The Commission has always regarded reconsignment as a privilege, not a right to be demanded by shippers, and has consistently refused to extend the same except to correct unjust discrimination.

C. W. Durbin for complainants.

E. E. Whitted for Colorado & Southern Railway Company.

F. C. Dillard for Union Pacific Railroad Company.

E. N. Clark for Denver & Rio Grande Railroad Company.

Henry McAllister for Chicago, Burlington & Quincy Railroad Company.

M. L. Bell for Chicago, Rock Island & Pacific Railway Company.

James C. Jeffery for Missouri Pacific Railway Company.

Hawkins & Franklin for El Paso & Southwestern Railway Company.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

These complaints are brought by eight coal companies operating in the Walsenburg fields, in the southern part of Colorado, on the Colorado & Southern and Denver & Rio Grande railroads, challenging the reasonableness of the rates on coal from Walsenburg to points in Kansas, Nebraska, Oklahoma, Texas, and New Mexico reached by the lines of the Chicago, Burlington & Quincy; Missouri Pacific; Union Pacific; Chicago, Rock Island & Pacific; Chicago, Rock Island & Gulf; Chicago, Rock Island & El Paso; El Paso & Southwestern; Fort Worth & Denver City; St. Louis & San Francisco; St. Louis, San Francisco & Texas; and the St. Joseph & Grand Island roads, which are named as codefendants with the Colorado & Southern and Denver & Rio Grande, the originating carriers.

The daily capacity of all mines in the Walsenburg district is something over 25,000 tons of high-grade bituminous coal, including lump, nut, and slack, and of this total the joint capacity of the mines operated by the companies complaining in this case is about 33½ per cent.

The complainants have filed voluminous exhibits, showing rates from Walsenburg to various points in several states, together with the distances and rates per ton per mile, and also the same data with respect to other producing fields in Kansas, Iowa, Missouri, Wyoming, Illinois, Oklahoma, and Arkansas. It is not practicable to reproduce these tables here, and they will be referred to only in so far as such reference may be necessary to an understanding of the issues. In a general way the rates from Walsenburg blanket quite an extensive territory, and necessarily produce a greater revenue per ton per mile to the shorter distant points in the respective groups. For example, selecting certain illustrative points on the Chicago, Burlington & Quincy road, we find that to Sidney, Nebr., a distance of 338 miles, the rate is \$3.50 per ton, or 10.4 mills per ton per mile; to Grand Island, Nebr., a distance of 608 miles, the same rate applies, yielding a revenue of 5.7 mills per ton per mile. To Sutton, Nebr., a distance of 500 miles, the rate is \$3.75 per ton, or a rate per ton per mile of 6.4 mills, and the same rate applied to Omaha, Nebr., a distance of 713 miles, yields revenue per ton per mile of 5.2 mills.

On the Missouri Pacific Railway: To Astor, Kans., a distance of 216 miles, the rate per ton is \$3.25, yielding a revenue per ton per

mile of 15 mills, and the same rate applying to Arkansas City, a distance of 599 miles, yields 5.2 mills. (Astor is a small station on the Missouri Pacific Railway not sufficient in importance to warrant the employment of a station agent, and practically no coal is consumed there.)

On the Union Pacific Railroad: To Ogallala, a distance of 403 miles, the rate is \$3.50 per ton, yielding a revenue of 8.6 mills per ton per mile, and to Grand Island, a distance of 581 miles, the same rate yields 6 mills per ton per mile. To Central City, a distance of 593 miles, a rate of \$3.75 yields 6.3 mills per ton per mile, and the same rate to Blue Springs, 761 miles, yields 4.9 mills per ton per mile.

On the Chicago, Rock Island & Pacific: To Texhoma, Okla., a distance of 262 miles, a rate of \$3.25 per ton yields revenue per ton per mile of 12.4 mills. To Alva, Okla., a distance of 619 miles, a rate of \$3.50 per ton yields revenue per ton per mile of 5.7 mills.

On the St. Louis & San Francisco: To El Dorado, Okla., a distance of 452 miles from Walsenburg, a rate of \$3.80 per ton yields revenue per ton per mile of 8.4 mills, and the same rate to Snyder, a distance of 496 miles, yields revenue per ton per mile of 7.6 mills. To Mountain Park, a distance of 499 miles, the rate of \$4.50 yields revenue per ton per mile of 9 mills, and the same rate to Okeene, a distance of 622 miles, yields revenue per ton per mile of 7.2 mills.

On the St. Joseph & Grand Island: To Fairbury, Nebr., a distance of 542 miles, a rate of \$3.75 per ton yields revenue per ton per mile of 6.9 mills, and to Severance, Kans., a distance of 670 miles, the same rate yields revenue per ton per mile of 5.6 mills.

On the El Paso & Southwestern: To Oscura, N. Mex., a distance of 508 miles, the rate is \$3.25 per ton, yielding revenue of 6.4 mills per ton per mile, and to El Paso, Tex., a distance of 636 miles, the same rate yields 5.1 mills per ton per mile.

Complainants contend that the blanket rates, above shown, cover groups of points too widely separated, and maintain that these groups should be changed so as to vary the rates to points embraced therein more nearly in proportion to distance; for example, that the rate of \$3.50 per ton now applied to all points in Kansas on the Union Pacific between the state line and Salina, covering a group territory about 235 miles in extent, should be applied to a narrower zone between Junction City and Salina, and that the rate should be graded down to two or three other zones between Junction City and the state line, so that when the latter is reached it will have been reduced to \$2.50 per ton. This joint through rate of \$3.50 per ton, applying to the Union Pacific points lying in the territory above described, has been established since the filing of the petition herein, the only

rate theretofore in effect having been made up of the local of \$1.60 to Denver added to the proportional of \$2.40 Denver to Oakley, Colby, and group points, and \$2.75 to points beyond, making through rates of \$4 and \$4.35, respectively, so that the reductions already made amount to from 50 to 85 cents per ton.

As stated, coal produced in the Walsenburg field is a superior bituminous product of about the same quality as that produced in the Canyon City district, and for domestic use it is preferred to Trinidad coal. In consequence, the only other Colorado coal which seriously competes with Walsenburg is that mined in the Canyon City district, and from Canyon City the rates to all competitive territory involved herein are on a parity with rates applying from Walsenburg. Canyon City is 40 miles west and Walsenburg is 50 miles south of Pueblo. The Canyon City district produces about 50 per cent as much coal as Walsenburg.

Walsenburg mines are operated under very favorable conditions. The veins of coal run from 6 to 7½ feet; comparatively little water and no gas are encountered; hoisting is not necessary, these being slope mines; and altogether mining conditions there are almost ideal for economical operation. The cost of production averages about \$1.50 per ton of mine-run coal. Some slack is dumped on account of unfavorable market conditions, so that the cost of production of lump and nut coal actually sold will be slightly in excess of the average just stated. From 65 to 68 per cent of the coal produced at these mines consists of lump; 15 to 20 per cent nut; 10 per cent pea; and the balance slack.

Complainants undertake to maintain a fixed price, f. o. b. mines, which is not varied, except where it is deemed necessary to quote a slightly lower figure to introduce their product to prospective customers, and in such case the fixed price is again charged as soon as sufficient opportunity has been given such customers to try the coal. The lowest mine price quotation is \$2.75 per ton.

There has been a gradually increasing production of coal in the Walsenburg district of late years, and while the financial stringency has somewhat affected sales, the testimony shows that Walsenburg has operated quite as successfully as any other producing field in the same general territory, and this notwithstanding the fact that complainants maintained their fixed price, as already stated, irrespective of competition or other market conditions. For example, defendants introduced an exhibit showing that for the five years ending with 1908 Walsenburg shipped 54 per cent of the entire tonnage of coal to Burlington points in Nebraska, while in 1908 the percentage of Walsenburg shipments had increased to 59 per cent and this against the competition of Missouri, Wyoming, Kansas, Iowa, and other Colorado coal.

Another exhibit showing coal shipped from the Walsenburg field, as compared with shipments from other Colorado fields and Wyoming, to certain typical Kansas points on the Union Pacific line for six months ending December 31, 1908, is in tons as follows:

Coal shipped from Walsenburg fields as compared with coal from Colorado and Wyoming for six months ending December 31, 1908.

To—	From Walsenburg.	From northern Colorado.	From other Colorado.	From Wyoming.
	Tons.	Tons.	Tons.	Tons.
Ellsworth	132	200	167	66
Bunker Hill	313			27
Wilson	171	900	45	328
Russell	481	189	470	392
Hays City	1,210	719	32	191
Ellis	339	294	244	739
Wakeeney	394	35	162	94
Grainfield	567	90	50	93
Oakley	720	79	70	240

While complainants' mines are operated under most favorable conditions, the operations of the railroads in connection with the transportation of coal therefrom are attended by difficulties which it is but fair that we should consider in passing upon the reasonableness of the rates here involved. All the mines in the Walsenburg district are reached by spur tracks, which were expensive to build, and which of course involve operating expenses directly and primarily chargeable against this coal traffic. The grades in this district are extremely heavy, an average of 11 empty cars being handled to the mines and a like number of loaded cars being handled out. These grades make the possibility of runaways a constant menace and necessitate constant inspection of cars and the employment of extra crews for the proper handling of trains. The mines being located on the Colorado & Southern and Denver & Rio Grande, and these initial carriers not reaching any of the consuming markets to which lower rates are asked, the revenue derived from this traffic is in every case to be divided between two and sometimes three participating carriers; whereas, from certain of the producing fields whose rates are compared with those applying from Walsenburg not only do the carriers encounter less adverse operating conditions, but the carriage in such cases is entirely performed by one line.

The Walsenburg mines, as a general rule, do not now attempt to compete in Colorado markets, such as Denver, which can be reached on a one-line haul, it being contended by them that these markets are not satisfactory by reason of the competition of low-grade lignite coal from the northern Colorado field. The distance from that field to Denver is 20 miles and the rate 80 cents per ton, whereas the Walsenburg distance is somewhat over 170 miles and the freight rate \$1.60

per ton. Complainants state that it would be necessary to quote a mine price of \$2 per ton in order for them to successfully compete in the Denver market. This, according to the estimated cost of production, would yield a profit of approximately 50 cents per ton.

The chief difficulty in the coal business throughout this western territory seems to be that the general distribution of mines and the enormous production of coal have resulted in glutting such markets as these operators can reasonably expect to reach by any adjustment of rates which could be considered fair to the carriers. The keen competition engendered by this excessive supply of coal has been brought to our notice in several recent cases. The decision of the Commission in *Nebraska State Railway Commission v. U. P. R. R. Co.*, 13 I. C. C. Rep., 349, was followed by a general readjustment of rates from the several Colorado producing fields, and this resulted in a reduction of the Walsenburg rates to many points. We have carefully examined the rates established by the Commission in that case with a view to the comparisons thus afforded with the Walsenburg rates, and find that the revenue per ton per mile yielded by the latter is generally not greater than that yielded by the rates from Hanna and Rock Springs, Wyo., to Nebraska points.

As stated, the Union Pacific has made effective since the hearing in this case a tariff putting in joint rates to stations on its line in Kansas, which has resulted in reductions from Walsenburg of from 50 to 85 cents per ton.

The Rock Island road has published in connection with the Colorado & Southern Railway through rates to intermediate points in Oklahoma west of Oklahoma City, to which rates have heretofore been made by using the maximum rates to points beyond or on combinations, which complainants contend have been difficult to definitely ascertain.

Complainants ask that the reconsignment rule carried in defendant's tariffs at the time of the hearing be superseded by a rule eliminating the 72-hour time limit and permitting the reconsignment of coal at any time upon the payment of a uniform charge of \$2 plus any demurrage which may have accrued pending receipt of the reconsignment order, "except that a car may be reconsigned, where through rates are in effect, out of direct route at the through rate plus one-half cent per ton per mile for the back haul subject to a minimum of \$5 per car." We do not propose to discuss at length this phase of these cases. The defendants have introduced testimony to show that this privilege has resulted in imposing upon the carriers very burdensome services for which they receive no adequate compensation, and that on account of the immense amount of extra

clerical work, switching service, etc., incident thereto, some restrictions are necessary. The Commission has always regarded reconsignment as a privilege—not a right to be demanded by shippers—and we have consistently refused to extend the same, except to correct unjust discrimination. We do not think there is merit in complainants' contention in this regard. It may be noted that the Burlington and perhaps other defendants have published a modified reconsignment rule since the hearing with which complainants have expressed satisfaction.

The chief reliance of complainants in these cases is based upon comparisons of the per-ton-per-mile revenue derived by the carriers from the transportation of coal from the Walsenburg district to the various points herein mentioned with the revenue per ton per mile from other coal-producing fields. We have examined the tables compiled by complainants showing these comparisons and have also carefully considered our former decisions in other cases wherein coal rates in this general territory have been passed upon. As stated in another case: "The rate-per-ton-per-mile rule brings rates down to the narrowest point of scrutiny, and for that purpose is valuable; but it excludes consideration of other circumstances and conditions which enter into the making of rates, no matter how compulsory or imperious they may be, and it can not, therefore, be accepted as controlling in determining the reasonableness of rates." *Gustin v. A., T. & S. F. Ry. Co. et al.*, 8 I. C. C. Rep., 277.

Taking into consideration the "other circumstances and conditions" which affect coal rates from the Walsenburg district, we are not convinced that these rates are unreasonable or unjust, and we are therefore constrained to dismiss these complaints.

16 I. C. C. Rep.

No. 1582.
UNITED STATES
v.
ADAMS EXPRESS COMPANY ET AL.

Submitted May 11, 1909. Decided June 8, 1909.

Defendants transported for complainant three shipments of merchandise from Washington, D. C., to Bremerton, Wash., charging therefor through rates in excess of the sums of the locals. Reparation awarded.

Secretary of the Navy for complainant.

T. B. Harrison, jr., for Adams Express Company.

J. M. Hannaford for Northern Express Company.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

It was alleged in the original complaint that about July 20, 1907, complainant shipped over defendants' lines of express, from Washington, D. C., to Bremerton, in the state of Washington, 3,748 pounds of merchandise, upon which defendants exacted a rate of \$11.75 per 100 pounds, making the aggregate charge for the shipment \$440.39; that said rate was unreasonable and unjust to the extent that it exceeded \$11.35 per 100 pounds, the sum of the locals between the points in question; that the rate from Washington, D. C., to Seattle, Wash., was, at the time of this shipment, \$10.85, and from Seattle to Bremerton the rate was 50 cents per 100 pounds. Reparation was asked on that basis, amounting to \$14.99, the difference between the through rate charged and the sum of the locals in effect, as above stated.

The defendants answered, admitting the shipment and charges as alleged, and while not specifically admitting the unreasonableness of the charges applied, they established joint through rates not in excess of the sum of the locals, as demanded by complainant, and expressed their willingness to make refund to complainant on that basis.

The case was submitted by correspondence upon petition and answers, and pending the correspondence with respect to the submission of the same in this manner, the complainant, on November 18, 1908, submitted an additional claim, for adjustment on the same basis, of overcharges on two subsequent shipments of merchandise from Washington, D. C., to Bremerton, Wash., as follows:

Date of shipment.	Weight.	Rate charged.	Sum of locals.	Alleged overcharge.
	<i>Pounds.</i>			
March 13, 1908.....	3,557	\$14.25	\$11.35	\$103.15
July 10, 1908.....	1,402	11.75	11.35	5.62

The defendants consented to the inclusion of these two subsequent shipments and to the disposition of the same on the basis of the shipment first presented.

The defendants established joint through rates on merchandise between Washington, D. C., and Bremerton, Wash., as follows:

Effective July 28, 1908, \$11.35 per 100 pounds on shipments of 1,000 pounds and over.

Effective August 5, 1908, \$11.95 per 100 pounds on shipments weighing 500 pounds and not over 1,000 pounds; and \$13.75 per 100 pounds on shipments weighing less than 500 pounds and over 100 pounds.

It is not charged in this case that the rates now in effect are excessive, and we have no basis in this record upon which to determine whether or not they are so.

Upon the facts appearing, we find that the rates charged upon these shipments were unreasonable and unjust, in so far as they exceeded the above-stated rates subsequently established. It is our conclusion that complainant is entitled to reparation on account of the shipments mentioned in the sum of \$123.76, and that rates not in excess of those now in effect on merchandise from Washington, D. C., to Bremerton, Wash., shall be maintained for a period of not less than two years from the date of this report. An order will be entered accordingly.

No. 2329.

G. HEILEMAN BREWING COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.

Submitted April 10, 1909. Decided June 7, 1909.

Defendant's rate of 19.3 cents per 100 pounds for the transportation of beer in carloads from La Crosse, Wis., to Glencoe, Minn., was unreasonable to the extent that it exceeded defendant's rate of 15 cents per 100 pounds, applied under substantially similar circumstances and conditions, on movements of the same commodity from La Crosse to Granite Falls, Minn., a point beyond. Reparation awarded.

R. D. Chamberlain for complainant.

William Ellis for defendant.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

This proceeding arises under section 4 of the act, and the facts appearing of record are as follows:

There was in effect at the time in question a commodity rate of 15 cents per 100 pounds on beer in carloads from La Crosse, in the state of Wisconsin, to Granite Falls, in the state of Minnesota, but the rate was not applicable to Glencoe, an intermediate point in Minnesota. The result was that upon 21 carloads of that commodity shipped during the period between June 22, 1908, and February 11, 1909, from La Crosse to Glencoe the complainant was required to pay a class rate of 19.3 cents per 100 pounds. The shipments aggregated 628,620 pounds in weight, and the total charges collected amounted to \$1,213.25. At the commodity rate of 15 cents established to Glencoe by a tariff that became effective February 27, 1909, the charges on the same movement, using 630,620 pounds as the aggregate weight, because one of the cars weighed 2,000 pounds less than the minimum applicable under the commodity rate, would have aggregated \$945.93. The difference between this sum and the charges actually collected is \$267.32, and in that amount the defendant in its answer offers to make reparation. The case is submitted on the pleadings.

16 I. C. C. Rep.

We find that the rate of 19.3 cents to Glencoe was unreasonable to the extent that it exceeded the defendant's rate of 15 cents, which applied under substantially similar circumstances and conditions on movements of the same commodity to Granite Falls, the point beyond. We also find that the complainant is entitled to reparation in the amount named in the petition, with interest.

An order will be entered accordingly.



No. 1800.

ROPER LUMBER-CEDAR COMPANY

v.

CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL

No. 1802.

SAME

v.

SAME.

Submitted February 8, 1909. Decided June 8, 1909.

Complainant discovering at the hearing that it did not have the expense bills or any other memoranda as to shipments made or moneys paid, moved to dismiss the complaints in these cases. Ordered accordingly.

F. G. Truedell for complainant.

S. A. Lynde for Chicago & North Western Railway Company.

Hale Holden for Chicago, Burlington & Quincy Railway Company.

REPORT OF THE COMMISSION.

COCKRELL, *Commissioner*:

The questions involved in each of these cases are precisely alike and the same as those presented in case No. 1798, 16 I. C. C. Rep. 382, where the facts are fully set forth.

16 I. C. C. Rep.

The complainant claimed the benefit of a through rate from point of origin to ultimate destination on shipments of lumber, shingles, poles, and posts, sawed, dressed, or concentrated in transit, having been compelled to pay the combination of the locals to and from the concentrating point. The defendant justified the charging of the combination of the locals because the complainant failed to comply with its tariff provision requiring the ultimate destination of the shipments to be shown in the shipping bill at originating points, which was required by the defendant as the means of checking the shipments in order to prevent manipulation in applying the through rate on local shipments up to the concentrating point or forwarding from the concentrating point in some other way than provided for in the tariff. This notation in the tariff has been eliminated.

The cases were set for hearing in connection with No. 1798. The parties appeared in the hearing of No. 1798, and at the close of that hearing the complainant discovered that it did not have expense bills or any other memoranda showing the shipments made or the moneys paid, as set forth in these two complaints, and for that reason the complainant moved to dismiss its cases. An order will be issued accordingly.

No. 2324.

BARRETT MANUFACTURING COMPANY

v.

GRAHAM & MORTON TRANSPORTATION COMPANY ET AL.

Submitted April 9, 1909. Decided June 8, 1909.

Reparation awarded on shipment of building paper from St. Joseph, Mich., to Wausau, Wis., because the sixth class rate, higher than the combination of local rates, was charged after such class rate had been canceled.

E. H. Poettler for complainant.

William Ellis for defendants.

REPORT OF THE COMMISSION.

COCKRELL, *Commissioner*:

The complainant seeks reparation in the sum of \$28.95 on a carload shipment of building paper weighing 41,350 pounds from St. Joseph, Mich., to Wausau, Wis. The shipment was made on May 16, 1908, upon which complainant was charged a rate of 21 cents per 100 pounds, amounting to \$86.94, being the sixth class rate as provided in Chicago, Milwaukee & St. Paul G. F. D. 49878, I. C. C. No. A-8593. This rate was canceled on July 1, 1908. The tariff issued, effective November 23, 1908, provided that the other class rates named should not apply on carload shipments of building paper, but that combination of rates will apply thereon. The combination rate in effect at the time shipment was made was 4 cents per 100 pounds from St. Joseph to Chicago and 10 cents from Chicago to Wausau, making a total of 14 cents. When the shipment was made there was a tariff rate of 14 cents per 100 pounds in effect between the points named via another route.

The defendants in their joint answer admitted the allegations in the complaint and stated that in the absence of modifying circumstances and conditions a rate of 21 cents per 100 pounds on building paper from St. Joseph, Mich., to Wausau, Wis., would be a reasonable rate. They admit that by reason of the fact that lower rates were in existence between said points at the time of said transportation, the

16 I. C. C. Rep.

charging of 21 cents per 100 pounds was in fact unjust and unreasonable, and ask that the Commission authorize and direct them to refund to the complainant \$28.95.

The complainant and defendants submitted a written stipulation that this action "may be determined upon the pleadings and without hearing, filing of briefs, and presentation of oral arguments being hereby waived."

As shown by the files of this Commission, considerable correspondence occurred between the complainant and the defendants in regard to the refund of this excessive charge, and finally the formal pleadings were submitted. If the parties had not misinterpreted their own tariff provisions, the defendants would doubtless have made the refund at a much earlier date. The facts are that there was no through route or joint rate in effect when the shipment was made and the only legal through rate was the combination of the locals under Graham & Morton Transportation Company tariff, I. C. C. No. 10, effective March 9, 1907, and still in force, which names rate on building paper, any quantity, from St. Joseph, Mich., to Chicago, Ill., 4 cents per 100 pounds.

Chicago, Milwaukee & St. Paul Railway tariff, I. C. C. No. B-641, effective January 4, 1908, provides rate on building paper, carloads, minimum weight 40,000 pounds, from Chicago, Ill., to Wausau, Wis., 10 cents per 100 pounds. This rate is still in force, as per Chicago, Milwaukee & St. Paul Railway tariff, I. C. C. No. B-1131, effective August 1, 1908. This makes combination rate in effect at time of shipment and at present time 14 cents per 100 pounds from St. Joseph to Wausau.

Chicago, Milwaukee & St. Paul Railway tariff, I. C. C. No. A-8593, effective August 15, 1905, and canceled July 30, 1908, names class rates from St. Joseph, Mich., to Winona, St. Paul, and Duluth, Minn., and groups. This tariff provides sixth class rate of 21 cents per 100 pounds from St. Joseph to St. Paul, and refers to I. C. C. No. A-8464 for list of stations taking Winona, St. Paul, or Duluth groups.

Chicago, Milwaukee & St. Paul Railway tariff, I. C. C. No. A-8464, referred to above, effective July 1, 1905, provides that Wausau, Wis., will take St. Paul rates. This tariff, however, was canceled by I. C. C. No. B-89, effective May 3, 1907, which would leave no through rate in line of shipment.

the complainant is entitled to reparation in the sum named.
will be entered accordingly.

No. 2071.

EMPIRE OIL WORKS

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
ET AL.

Submitted March 21, 1909. Decided June 8, 1909.

Defendants' rate for the transportation of gasoline in carloads from Reno, Pa., to Milton Junction, Wis., found unreasonable to the extent that it exceeded the combination of local rates between the same points. Reparation awarded.

A. L. Confer for complainant.

William Ellis for Chicago, Milwaukee & St. Paul Railway Company.

REPORT OF THE COMMISSION.

PROUTY, *Commissioner*:

On April 26, 1907, the complainant shipped from Reno, Pa., to Milton Junction, Wis., over the line of the Lake Shore & Michigan Southern Railway and the Chicago, Milwaukee & St. Paul Railway, one carload of gasoline weighing 23,142 pounds, against which a rate of 33½ cents per 100 pounds was assessed and collected, that being the established joint rate. The combination of locals on Milwaukee via this route at the date of the shipment was 21 cents, making a difference of \$28.93 between the amount which complainant paid and the amount which it would have paid under the combination.

On September 10, 1907, the defendants established a joint through rate via this line of 21 cents, which has ever since been, and is now, in effect. This matter was brought to the attention of the Commission by the complainant in November, 1907, and formal complaint was, after considerable correspondence, filed January 22, 1909.

The defendants admit that the rate charged was excessive and that 21 cents would have been a reasonable rate to apply at the time of shipment, and the Chicago, Milwaukee & St. Paul also admits that it is alone responsible for the amount of the overcharge. The complaint does not attack the reasonableness of the 21-cent rate now in effect.

We find that the rate applied to this shipment was unreasonable; that 21 cents would have been a reasonable rate, and that the complainant is therefore entitled to recover of the defendant, Chicago, Milwaukee & St. Paul Railway Company, the sum of \$28.93, with interest. An order will be issued accordingly.

No. 1516.

CEDAR HILL COAL & COKE COMPANY ET AL.

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted May 4, 1909. Decided June 8, 1909.

Defendants ordered to cease and desist from according to coal originating upon the Colorado & Southeastern Railway and transported to points upon the Santa Fe a lower rate than is given to the coal of the complainants from their mines at Ludlow, Colo.

C. W. Durbin for complainants.

T. J. Norton, for Atchison, Topeka & Santa Fe Railway Company.

E. E. Whitted for Colorado & Southern Railway Company.

Caldwell Yeaman for Colorado & Southeastern Railway Company.

REPORT OF THE COMMISSION ON PETITION FOR REHEARING.

PROUTY, *Commissioner*:

This proceeding is before us upon petition for rehearing by the defendant, Colorado & Southern Railway Company.

The Colorado & Southeastern Railway is owned by the Victor Fuel Company. Joint rates are in effect between the Colorado & Southeastern and the Atchison, Topeka & Santa Fe from points upon the Colorado & Southeastern to points upon the Atchison east and south to Trinidad, which are the same as the Trinidad rate. This coal under a trackage contract with the Colorado & Southern moves from Ludlow to Trinidad over the rails of that company.

The mines of the complainants are located at Ludlow. There are no joint rates between the Colorado & Southern and the Santa Fe, and the local rate from Ludlow to Trinidad for shipment beyond is 40 cents per ton. This gave the Victor Fuel Company an advantage of 40 cents per ton over the complainants upon shipments to points on the Santa Fe, although the coal of the Victor Fuel Company

moved by the mines of the complainants. It was this discrimination, and this alone, against which the complaint was directed.

When the case was previously before the Commission for disposition (15 I. C. C. Rep. 73) the Colorado & Southeastern was not a party, and the Commission was of the opinion that the only relief it could properly give upon that state of the record was by dealing with the rates themselves. It accordingly reduced the rate from Ludlow to Trinidad for beyond from 40 cents to 25 cents, and directed the Santa Fe to apply to the movement of such traffic a rate of 10 cents less than its Trinidad rate, this being the allowance made by that company to the Colorado & Southeastern upon similar traffic. This, as pointed out by the Commission in its report, still left the Victor Fuel Company an advantage of 15 cents per ton.

With this order none of the parties were satisfied. The Colorado & Southern filed this petition for rehearing upon the ground that the reasonableness of its rates had not been attacked upon the hearing. The complainants insisted that there still remained against them a discrimination of 15 cents per ton, which the Commission itself had already pointed out, and willingly consented that the petition for rehearing be granted. We accordingly vacated our former order and cited in the Colorado & Southeastern. A further hearing has been had, although no new testimony was offered, briefs have been filed, and the matter now stands for disposition *de novo*.

In the original report the Commission said:

In our opinion these railroads should not be allowed to so divide and diversify themselves by contract and traffic agreements as to work a practical discrimination. The sum total of this arrangement between the Colorado & Southeastern, the Colorado & Southern, and the Atchison, Topeka & Santa Fe is an unlawful preference against the mines of the complainants and in favor of the mines of the Victor Fuel Company, from which in a proper case these parties might be ordered to cease and desist; but the Colorado & Southeastern is not made a party to this proceeding, and no order of that kind should ordinarily be made unless all the offending roads are before the Commission.

We did not make the order indicated in this paragraph for the reason that the Colorado & Southeastern was not then before us. It is now a party and we think the Commission has, at the present time, the authority to require, and should require, these defendants to cease and desist from according to coal originating upon the Colorado & Southeastern and transported to points upon the Santa Fe a lower rate than is given to the coal of the complainants from their mines at Ludlow. This order, if complied with, will remove the discrimination which was alone complained of in the original petition.

The complainants now suggest that, inasmuch as the Victor Fuel Company owns the Colorado & Southeastern Railway, any favor shown

16 I. C. C. Rep.

the railway company redounds to the benefit of the fuel company, and they therefore ask the Commission to order the Colorado & Southern to transport their coal from Ludlow to Trinidad for 10 cents per ton. It was pointed out in the original opinion that the unity of interest between the Victor Fuel Company and the Colorado & Southeastern Railway Company rendered it impossible to deal in an effective manner with this situation. It was our opinion then, and still is, that the best that can be done in the final analysis is to establish rates which are reasonable; but we do not feel that we can make those rates lower, certainly, than the ones named in the original order; and the complainants assert that this is of no practical benefit to them. A compliance with the present order will remove all discrimination upon the face of the tariffs.

If the Santa Fe should make to the Colorado & Southeastern a division in the handling of this business by which it received less for its service from Trinidad upon traffic coming from that road than when it comes from the complainants' mines upon the Colorado & Southern, that would, we think, amount, in effect, to a direct preference to the Victor Fuel Company, which if granted would justify us in carefully examining the reasonableness of the through rates imposed and in taking further steps to correct the discrimination. We shall therefore require the defendants to state the divisions which are agreed upon if joint rates are established.

16 I. C. C. Rep.

No. 1728.

ASSOCIATION OF UNION MADE GARMENT MANUFACTURERS OF AMERICA

v.

CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL.

Submitted May 12, 1909. Decided June 8, 1909.

The garments manufactured by the members of the complainant association, such as overalls, jackets, shirts of low grades, and play suits for children, made of coarse heavy cotton cloth, are classified in the Official, Western, and Southern Classification as first class, and the purpose of this proceeding is to obtain a reduction in that rating; but upon the facts disclosed by the record the contention is not sustained and the complaint is dismissed.

C. H. Darling and O. F. Hibbard for complainant.

O. E. Butterfield for Cleveland, Cincinnati, Chicago & St. Louis Railway Company and West Shore Railroad Company.

Robert Dunlap, T. J. Norton, and F. B. Houghton for Atchison, Topeka & Santa Fe Railway Company, Chicago & North Western Railway Company, Chicago Great Western Railway Company and Receivers, and Wabash Railroad Company.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

The members of the complainant association manufacture cheap cotton garments, like overalls, jackets, shirts of low grades, play suits for children, etc. They are usually made from denims, a coarse, heavy cotton cloth, although gingham, a lighter cotton fabric, are used for shirts and other articles which they make.

The raw material is shipped to the factories in cases and bales. The garments are generally shipped in boxes, sometimes in bales. The weight of a cubic foot of the raw material as shipped, including the case, is about 19 pounds. The weight of a cubic foot of manufactured garments as offered for shipment is 17 pounds. The average value of the raw material is about \$27 per 100 pounds, as shipped, while that of the manufactured product is 75 per cent more.

The garments manufactured by the complainant are classified in the Official, Western, and Southern Classification as first class; and the purpose of this proceeding is to obtain a reduction in that rating.

Cotton piece goods in Official Classification fall under Rule 25, 15 per cent less than second class; in Western Classification they are rated as first class, but generally move under commodity rates, which are about equal to third class; in Southern Classification they are, according to the character of the fabric and manner of shipment, from first to fourth class.

These cotton garments are classified as clothing, being included with woolen garments of all kinds. The value of the woolen garment is very much greater, on the average, than that of these cotton garments. Woolen cloths are classified as first class, the same as the garments manufactured from them. The complainant insists that the cotton clothing which it manufactures ought not, by reason of its less value, to pay the same rate as woolen clothing, and it also urges that the rate applied to the manufactured article ought, in analogy with the treatment accorded to clothing made from woolen cloth, to be classified more nearly with the raw material.

It has already been noted that the value of these cotton garments is substantially greater than that of the raw material, and also that, as presented for shipment, they are somewhat more bulky than the cotton cloth. The general principle, therefore, that the manufactured article should pay a higher rate than the raw material would seem to be applicable to the present case, and the complainant concedes that the rating of its garments ought to be somewhat higher than that of the cotton piece goods from which they are made. It insists that the second class rate would be the proper rating.

These garments manufactured by the complainant are frequently known as workingmen's clothes. The price of a pair of overalls to the consumer is \$1; a suit can be bought for \$2; a child's play suit sells for \$1. The cheapest shirt manufactured by the complainant retails for 50 cents. It is true, therefore, that these garments are usually worn by the poorer classes. The man in better circumstances, who can afford it, wears woolen rather than cotton goods. The complainant contends that it is unjust to impose the same freight rate per 100 pounds upon the cheap clothing of the poor laborer as is imposed upon the higher priced clothing of his wealthy employer.

This position is well taken. In the imposition of freight rates the man who has little with which to pay should not be charged in excess of his more fortunate neighbor. Wherever the transportation charge is by weight and the weight of the cheaper grade is substantially the same, the poor man pays more freight in proportion to the value of the service than he who consumes the costlier article. It is difficult to see how this can be obviated. Just how is it to be corrected with respect to the present commodity?

There are three things which might be done. First, this commodity might be designated by name and given a lower rate. Second,

the rate might be determined by the value. Third, all cotton garments might be placed in a lower class.

The complainant for the most part only manufactures these few articles, and it would not be difficult to put into second class the things made by it. In some instances these articles have been given a commodity rate lower than the first class rate. If, however, the cotton garments which it manufactures are to be carried as second class, what good reason exists for refusing the same rating to cotton garments of different kinds of substantially the same value? If a cotton suit manufactured by this complainant, selling to the consumer for \$2, is to go second class, why not apply the same rate to a woman's wrapper, selling for the same price?

If, now, we were to undertake to classify these different cotton garments by name, it would become impossible to draw the line with any satisfaction between those which should take first and second class. Take cotton wrappers, for example, which sell to the consumer all the way from \$1 to \$20 apiece, or shirts, which retail from 50 cents to \$2.50 and higher. Where shall the line be drawn? And so is it with almost every garment of cotton worn by men or by women.

While the carriers themselves may be able to select certain of these articles and apply to them a particular rate for some particular purpose, it is difficult to see how this Commission could attempt to lay down any such rule for general application, or how, having accorded to these garments the rating asked for, it could decline to extend the same treatment to other cotton garments of substantially the same kind. We are apprehensive that an attempt to do so would lead to a more unsatisfactory condition, on the whole, than the present.

Perhaps the most satisfactory way would be to provide that articles of a certain value should take a certain rate. It appears that garments manufactured by this complainant are worth approximately 50 cents per pound. Now, the tariff might provide that cotton garments of all kinds of the value of 50 cents per pound and less should be second class, while cotton garments of a greater value should be first class. This classification could be extended to woolen garments, and under that treatment no discrimination whatever would exist between woolen and cotton clothing.

Theoretically, this kind of classification may be correct; but the carriers have always earnestly insisted that it is not practicable, for the reason that it is not possible to ascertain and apply without discrimination the test of value. They urge that in order to secure the observance of the rate it is necessary that the thing transported shall be designated according to some visible token, which can be readily seen and distinguished, so that frauds upon the part of the shipper can be

easily detected and prevented. This subject has been previously referred to by the Commission. While we feel that the difficulties suggested by the carriers may at the present time be overstated, we are not prepared now to establish by our order that system against their protest.

The third and remaining course is to classify all cotton garments as second class, and for this very persuasive reasons are advanced. There is a clear distinction between garments into which wool enters and those made exclusively of cotton, and the value of the cotton garments is on the average very much less than that of the woolen. The raw material out of which cotton garments are made is carried at a much lower rate than the material which goes into the woolen garments.

It should be noted that in this proceeding no affirmative discrimination is complained of. Garments of cotton and of wool come into competition with one another, and since the freight rate affects in a degree the price at which the garment can be sold, it follows that this rate must in a measure determine the ability of the complainant to sell its product in competition with woolen garments, but the freight is so small an item in the cost to the retail dealer or the consumer of both woolen and cotton garments that this does not seem to produce any practical effect. While in fact the discrimination exists, it is not sufficient to become obvious.

So, too, it is evident that the freight rate might determine the point at which these garments should be manufactured. If the cost of transporting the raw material is very much less than the cost of transporting the manufactured article, then the process of manufacturing can, so far as the freight rate goes, be more advantageously conducted in the vicinity where the garment is finally sold; but the members of this association seem to operate in almost all parts of the United States, and to sell their goods, no matter where manufactured, in almost all parts of the country. While therefore this sort of discrimination must exist, if the relation between the raw material and the manufactured article is not the correct one its effect has not been sufficient to challenge attention.

The only purpose of this proceeding and the only effect of an order revising this classification would be to give this complainant a lower freight rate, and therefore to reduce the cost at which it is able to lay down its manufactured product.

Formerly cotton clothing, woolen clothing, and both cotton and woolen cloths were first class. The defendants say that the lower rate to-day accorded cotton fabrics is due to competitive conditions. Cotton cloth, as is well known, is woven both in New England and in the south. When the cotton mills from the south began to invade the markets in the west, which had previously been occupied by the New England

mills, pressure was brought to bear upon carriers leading from New England to the west to reduce the rate on cotton goods and this led at first to the application of a lower rate on certain kinds of cotton weavings. The testimony in the case shows that this concession was first made in 1886. The kinds of cotton cloths to which these lower rates were applied gradually increased in number and much difficulty was experienced in distinguishing between those varieties which were entitled to the lower rate and those which should pay the first class rate. In 1900 those cotton piece goods which had formerly gone at third class were advanced to second class, and finally a compromise was reached by which all cotton piece goods were carried in Official Classification territory under Rule 25 at 15 per cent less than second class.

In the same way, in Western and Southern Classification territory competition has forced down the rate on cotton fabrics; while woolen cloths, together with garments made from both cotton and wool, have remained first class. The changes in classification, therefore, upon which the complainant relies have resulted in a loss of revenue to the carriers.

If the Commission were constructing a classification to-day it would probably rate cotton garments lower than woolen garments, but we find these commodities already classified as they are. Any change in their classification affects the revenues of the carrier. Assuming that these revenues are now correct, if the rate on cotton garments were reduced that on woolen garments should be advanced. This we have no power to direct, and we should very likely decline to permit it if the carriers were to attempt such revision. It must be evident to the complainant's members, who are men of affairs, that railroad tariffs can not be continually corrected by making reductions alone unless they were unreasonably high to begin with. These defendants are insisting that their rates generally are too low, that they must be advanced, and while this Commission has hesitated to approve such advances, except where they were clearly justifiable for special reasons, we also feel that we ought to make reductions with great care in most parts of the United States unless there is some special reason calling for such action. If in this case the complainant labored under some form of discrimination, the effect of which was apparent, or if these rates were so high as to unduly burden the movement of this traffic, it would be our duty to interfere, even though that did involve a reduction of rates; but where, as in this proceeding, the effect of no discrimination is pointed out, where the traffic moves with the greatest freedom, where the only result of the action asked for would be to somewhat reduce the rate paid by the complainant, we feel that we must deny the application.

The complaint will be dismissed.

No. 1898.
EDWARD L. KURTZ
v.
PENNSYLVANIA COMPANY ET AL.

Submitted May 22, 1909. Decided June 8, 1909.

1. Complainant, desiring to travel from New Castle, Pa., to New York City via the Pennsylvania Company to Pittsburg and the Pennsylvania Railroad from Pittsburg, presented a local ticket from New Castle to Pittsburg and a mileage book from Pittsburg to New York for the purpose of securing his berth in a Pullman car; but the agent refused to grant him the Pullman accommodations upon the ground that his regulation prohibited him from selling such accommodations except upon a through ticket, which in this case was greater than the combination of locals; *Held*, That under its tariff the Pullman Company should have declined, as it did, to sell the through berth to the complainant.
2. While these defendants are within their rights in maintaining their regulation in force in this case, such conditions as the one here developed can not be permanently permitted, as it is the almost invariable rule of this Commission that the through charge must not exceed the combination of locals.

Edward L. Kurtz for complainant in person.

E. A. Ford, J. J. Brooks, and C. B. Fernald for Pennsylvania Company.

Alexander & Green and Allan McCulloh for the Pullman Company.

George Stuart Patterson for Pennsylvania Railroad Company.

REPORT OF THE COMMISSION.

PROUTY, *Commissioner*:

The complainant being at New Castle, Pa., desired to travel from there to New York City via the Pennsylvania train leaving New Castle at 9 o'clock in the evening and reaching New York the following morning; and for greater comfort he further desired to obtain sleeping-car accommodations for the night.

The line from New Castle to Pittsburg is operated by the Pennsylvania Company; from Pittsburg to New York by the Pennsylvania Railroad Company. While the Pennsylvania Railroad Company

owns most of the stock, and therefore controls the Pennsylvania Company, the operations of the two are kept entirely distinct, and this case must be disposed of as though there were no common interest in the management of these two railroads.

The Pennsylvania Railroad Company issues a mileage book of 1,000 miles, good to bearer, for 2 cents per mile, and the complainant had one of these books containing a sufficient number of miles to carry him from Pittsburg to New York. He purchased, in addition, a regular first class local ticket from New Castle to Pittsburg, and presented this ticket and the mileage book to the agent of the Pullman Company at New Castle for the purpose of securing his berth to New York, which he had previously reserved. The agent informed him that the regulations under which he was acting prohibited the selling of Pullman space upon that transportation, and further said to him that it would be necessary, if he desired to procure Pullman accommodations from New Castle to New York City by that train to purchase a through ticket.

The Pennsylvania Company and the Pennsylvania Railroad Company maintain a through route from New Castle to New York, over which a joint rate of \$11.75 applies. The regular fare from Pittsburg to New York is \$10.50, and from New Castle to Pittsburg \$1, making a combination of \$11.50, which is, it will be noticed, 25 cents less than the published joint through rate.

The distance from New Castle to Pittsburg is 50 miles. The rate was formerly \$1.25, but, in obedience to the act of the legislature of the state of Pennsylvania, fixing a 2-cent passenger mileage schedule for the state, that fare was reduced, and now is \$1. The Pennsylvania Railroad Company sought and obtained an injunction against the 2-cent statute; but the Pennsylvania Company has never applied for such injunction, and still maintains the 2-cent scale.

The complaint alleges that the through rate of \$11.75 from New Castle to New York is excessive and unreasonable, for the reason that it exceeds the combination of locals; but that question, while raised by the complaint, is not presented by the facts in this case, was not gone into upon the hearing, and is not considered in this report.

The complainant, not being able to purchase a Pullman ticket at New Castle, boarded the train without one and presented to the Pullman conductor upon the train his local ticket and his mileage book, asking to be assigned a berth to New York. The Pullman conductor stated to him, as the Pullman agent at New Castle had done, that he could not sell the Pullman berth from a point west of Pittsburg upon that transportation. The complainant accordingly paid his local seat fare of 25 cents to Pittsburg. At Pittsburg he

was able to obtain from Pittsburg to New York the same berth which he had reserved at New Castle and which he had occupied from New Castle to Pittsburg.

The Pullman fare from New Castle and Pittsburg to New York is the same. The seat fare paid by the complainant from New Castle to Pittsburg was 25 cents. The complainant was therefore compelled to pay for his Pullman accommodations 25 cents more than he would have paid had either the agent at New Castle or the conductor upon the train sold him the through berth. This amount he seeks to recover, his real purpose being to test the lawfulness of the regulations of the defendants by which he was prevented from obtaining through Pullman service under the circumstances detailed.

The rate of \$1 from New Castle to Pittsburg is not filed with this Commission and can not be used as a base for constructing interstate fares. The Pennsylvania Company does, upon the other hand, file an interstate rate of \$1.25. The two defendants maintain a joint through rate from New Castle to New York of \$11.75. They urge that, in the face of these facts, it would be illegal upon the part of the complainant to obtain through transportation at less than the published through rate, and illegal upon their part to permit it. If, they say, the complainant, knowing that he is to make a through journey from New Castle to New York, purchases a local ticket for \$1 to Pittsburg, and a local ticket from Pittsburg for \$10.50, for the purpose of thereby securing through transportation at \$11.50, which is less than the published through rate, he is guilty of a violation of the act to regulate commerce, and the defendants, if they knowingly permit this practice, are equally guilty.

It is certainly true that if the defendants publish a joint through rate between two points they can not contract to transport the passenger between those points for a less sum than the published schedule. The Commission has held in several cases that a through passenger rate may be maintained which is greater than the sum of the locals. *Railroad Commissioners v. Eureka Springs R. R. Co.*, 7 I. C. C. Rep., 69; *Savannah Bureau of Freight & Transp. v. Charleston & Savannah R. R. Co.*, 7 I. C. C. Rep., 601; *Artz v. Seaboard Air Line Ry.*, 11 I. C. C. Rep., 458; *Brabham v. Atlantic Coast Line R. R. Co., et al.*, 11 I. C. C. Rep., 464.

In *Savannah Bureau v. Charleston & Savannah Ry. Co.*, *supra*, the complaint was that the through rate charged by the defendants from Charleston to Savannah exceeded the sum of the local rates established by the railroad commissions of South Carolina and of Georgia. It appeared that such was the fact, notwithstanding which this Commission held that the through rate was just and reasonable.

Let us assume, now, that the through rate from Charleston to Savannah established by the Atlantic Coast Line was \$6, while the rate from Charleston to the state line was \$3, and from the state line to Savannah \$2. It is apparent that if a passenger applied to the railroad company at Charleston for a ticket to Savannah, that company must sell him a through ticket for \$6, and would have no right to sell two local tickets for \$5; for that would be an evasion of its published tariff rates. Upon the other hand, this Commission has stated in its administrative rulings, and now repeats, that the passenger may properly pay his fare from Charleston to the state line and again from the state line to Savannah, although he thereby obtains through transportation between these points for less than the published through rate, and although he does so, knowing that he is to go from Charleston to Savannah, and deliberately seeking this means of obtaining transportation at less than the through rate.

The reason for this is that not the intent of the parties but the actual transaction must be regarded, as was held by the United States Supreme Court in *Gulf, Colorado & Santa Fe Ry. Co. v. Texas*, 204 U. S., 403, involving the transportation of a carload of grain from a point in North Dakota to a point in Texas, at a rate from the point of origin to Texarkana and a rate from Texarkana to destination, which, when combined, were less than the through rate. The Charleston & Savannah Railroad Company sells to all the world tickets from Charleston to the state line for \$3, and again from the state line to Savannah for \$2. A passenger may purchase his ticket to the state line, and when he arrives there that contract of transportation is at an end. He now purchases another ticket from the state line to Savannah and a new contract of transportation begins. If the regulations of the railroad company permit it, he may, instead of purchasing a ticket, pay his cash fare upon the train, to the same effect. He has, indeed, secured through transportation for less than the through rate; but he has done so by putting together two local transportations at the local rates.

Congress might undoubtedly say that this shall not be done, but up to the present time has not so declared. It is therefore true that the complainant might have entered the train at New Castle, intending to go to New York, and have used his local ticket to Pittsburg and his mileage book from Pittsburg without violating the act to regulate commerce. Nor would the defendants, had they known of the transaction and made no effort to prevent it, have been guilty of moral or of legal wrongdoing. The complainant would have been quite within his legal rights.

This, however, is not exactly the question presented here, which is: Was the Pullman Company justified in refusing to sell the complainant Pullman space at its ticket office or upon the train?

The Pullman Company is a common carrier, subject to the jurisdiction of this Commission. It is required to publish its rates and its regulations governing the application of those rates, and these when published are for our consideration and correction.

The tariff of the Pullman Company applicable to this transportation provides:

Accommodations in the cars of this company will be sold only to passengers holding transportation required by railroad company concerned.

Did the local ticket from New Castle to Pittsburg and the mileage book from Pittsburg to New York constitute transportation from New Castle to New York "required by the railway company?" In answering this question we assume that the mileage book which was good to bearer and upon the train was equivalent to a local ticket from Pittsburg to New York.

As already seen, the \$1 fare was not published by the Pennsylvania Company and was not available for the construction of an interstate rate; upon the contrary, that company published a fare of \$1.25, which was to be used as a base for the construction of its interstate fares to and from New Castle. The two defendants publish a joint through rate from New Castle to New York, constructed by using the \$1.25 rate from New Castle to Pittsburg. This being so, we do not think that the \$1 local ticket and the local ticket from Pittsburg to New York were transportation which the railway companies, defendants in this proceeding, required or could recognize as through transportation from New Castle to New York. It was transportation by which the complainant could secure his passage between those points; he could convert it into through transportation; but it was not through transportation when tendered to the Pullman agent or conductor. In our opinion, therefore, under its tariff the Pullman Company should have declined, as it did, to sell the through berth to the complainant.

The second question presented is whether this requirement upon the part of the Pullman Company and the two railroad companies was a just and reasonable one to be enforced against this complainant under the circumstances presented by him. This question we are inclined to answer in the affirmative.

These Pullman lines by which through service is accorded are maintained at the joint expense of the Pullman Company and the railroad companies interested. Generally speaking, the railway company may properly exercise a voice in determining the kind of transportation which will entitle the holder to Pullman accommodation, the reasonableness of that requirement being always a question for the Commission. In this particular instance we think the

requirement was reasonable. So long as these railroad companies can properly maintain a joint through rate which is higher than the combination of locals, we think they may insist that through Pullman space shall only be sold upon presentation of a through ticket. If they can compel the passenger to divide his journey into two parts for the purpose of securing his train transportation they may compel the same thing with respect to the Pullman service—that is, they may compel him to pay the local Pullman fare to Pittsburg and the local Pullman fare from Pittsburg.

While, however, we have felt constrained to hold that these defendants are within their rights in maintaining the regulation in force in this case, we desire at the same time to emphasize the remark that such conditions as the one here developed can not be permanently permitted. It is the almost invariable rule of this Commission that the through charge must not exceed the combination of locals. While we have held in some cases that a higher through passenger fare may be maintained than the sum of the local fares, it will be found upon examination that there have been in every instance peculiar and special reasons for that holding. The general rule as to passenger fares must be the same as to freight rates. In this case there is no reason why, if \$1 is a just charge from New Castle to Pittsburg for the local service, a higher rate should be applied for through interstate transportation. If the Pennsylvania Company intends to submit permanently to the 2-cent schedule for state business, it must be prepared, in the near future, to apply that same schedule to the making of its interstate tariffs.

The Pennsylvania Company issues in connection with various other railroad companies an interchangeable mileage book which is good upon lines west of Pittsburg. A sample of this mileage book, as well as of that one issued by the Pennsylvania Railroad Company, was introduced upon the hearing, and the defendant railroad companies stated that they were mainly interested in obtaining an expression of opinion from the Commission as to whether the sale of Pullman space must be made to persons offering for transportation these mileage books. That is, if the complainant, instead of a local ticket had presented an interchangeable mileage ticket from New Castle to Pittsburg and his mileage book from Pittsburg to New York, might the Pullman Company in that case have declined to issue the through accommodation?

We have already seen that the tariff of the Pennsylvania Company expressly provides that the \$1 fare from New Castle to Pittsburg can not be used for an interstate journey. No provision appears in the tariff either of the Pennsylvania Railroad Company providing

for the issue of its mileage books, nor of the Pennsylvania Company providing for the interchangeable mileage book, which in any way limits those books to a local trip. So far as the tariff goes and so far as the contract of the mileage book itself is concerned, the book is perfectly good for part of a through journey. A man may travel from Pittsburg to New York or from New Castle to Pittsburg without any reference to the point to which he is going or from which he comes. Neither of these mileage-book tariffs provides that they shall not be used in connection with through Pullman transportation between points east and points west of Pittsburg; indeed, these tariffs, which provide, among other things, for the manner of using these mileage books upon sleeping cars, rather intimate that they may be so used.

We are of the opinion, therefore, that when the passenger presents to a Pullman conductor an interchangeable mileage ticket and a Pennsylvania mileage book entitling him to transportation from New Castle to New York, he presents such transportation for that journey as is "required by the railway company."

It is suggested that the passenger using the mileage books would obtain through transportation for less than the published through rate; but this is of no apparent significance, since the local transportation which he obtains by the use of his mileage book is less than the local rate, and there is nothing confining the use of the book to local service.

A mileage book is issued usually, if not invariably, at a rate less than the local fare, and in consideration of this the railroad company may, in the issuing of the mileage book, attach to its use various conditions. It might provide, for example, that it should not be used for transportation upon part of a through journey between a point on the railroad issuing the mileage book and a point on some other railroad, whether that journey be state or interstate.

Whether this Commission has jurisdiction to pass upon the reasonableness of the conditions attached to a mileage-book contract at all, or whether, having such jurisdiction, it would pronounce a condition like that above suggested reasonable or unreasonable, is not considered. If the defendants desire to limit the use of the mileage book in the manner suggested, they should, in our opinion, so provide in their tariffs and in the contract.

This further observation should perhaps be made. The Commission might hold that the through rate ought not to exceed the sum of the locals and at the same time hold that a condition that these mileage books should not be used for the purposes of through transportation was reasonable. It may be of great importance to the

Pennsylvania lines to maintain the integrity of their through rates between Chicago and New York. That fare is now \$20 and the distance by the Pennsylvania lines 912 miles. The use of these 2-cent mileage books for a through journey from New York to Chicago would result in a reduction of the through rate to \$18.24, which would affect not only the Pennsylvania Company, but all other through lines. That company might well conclude that it would not issue these mileage books at all if it was subjected to the necessity of opening them to such through use. To hold, therefore, that they must be so available would be virtually to deprive the public of the benefit of the mileage book altogether.

The Pennsylvania lines file with this Commission joint circular No. 1907, I. C. C. No. 1449, which provides that these mileage books can not be used for through transportation between points east and west of Pittsburg; nor for the purchase of through Pullman space. There is no reference in this circular to either of the tariffs providing for the mileage books above referred to, nor do those tariffs in any way refer to this circular. The mere filing and posting of a circular of this character in that manner can not be held to be a notice to the public modifying the established tariffs of a railroad company, or limiting the use of the tickets provided for by those tariffs.

The complaint will be dismissed.

No. 1825.

JAMES PHILIP

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
ET AL.

Submitted May 31, 1909. Decided June 7, 1909.

The through charges exacted on complainant's shipments of range cattle from Midland, Tex., to Kennebec, S. Dak., under the conditions obtaining at the time, were excessive to the extent of 9½ cents per 100 pounds, and as the excess was collected by the principal defendant for its portion of the transportation, reparation is awarded against that carrier.

James Philip for complainant in person.

William Ellis for Chicago, Milwaukee & St. Paul Railway Company.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

This is a reparation proceeding, and the freight charges that are complained of as unreasonable were collected on 19 carloads of range cattle which the complainant shipped on May 8, 1907, from Midland, in the state of Texas, to Kennebec, in the state of South Dakota. There was not at that time, and is not to-day, a joint through rate in effect between those points. The total charges collected on the shipments were based on a local rate of 15 cents per 100 pounds upon a carload minimum of 20,000 pounds established by the initial carrier, the Texas & Pacific Railway Company, from Midland to Fort Worth; the defendants' joint proportional rate of \$95 per car from Fort Worth, Tex., to Chamberlain, S. Dak.; and a rate of 9½ cents per 100 pounds thence to destination. The charges aggregated \$2,782.45.

Kennebec is a local point on the road of the principal defendant, about 30 miles west of Chamberlain, and at the time the shipments moved that line had recently been constructed and had just been opened for traffic. It was for this reason that the rate of \$95 per car from Fort Worth to Chamberlain had not been made applicable to

Kennebec. The rate was subsequently extended to that point in December, 1907.

The case is submitted upon stipulation, and the answers of the defendants admit the justice of the complainant's demand for reparation.

We find that the through charges exacted on the complainant's shipments were, under the conditions obtaining at the time, excessive, and therefore unlawful to the extent of 9½ cents per 100 pounds; and that the excess was in the charges collected by the principal defendant. In view of the length of the haul and the fact that the proportional rate to Chamberlain from Fort Worth applicable on shipments originating beyond was \$95 per car, it was unreasonable to add 9½ cents for the haul of only 30 miles farther to Kennebec. The complainant is therefore entitled to an award of reparation against the principal defendant in the sum of \$397.10, with interest, being the difference between the total through charges actually collected on the shipments and the amount that would have been chargeable if the \$95 rate had applied to Kennebec.

An order will be entered in accordance with these findings.

16 I. C. C. Rep.

No. 2011.

WILLIAM K. NOBLE

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
ET AL.

Submitted March 26, 1909. Decided June 21, 1909.

Reparation awarded for excessive charges collected on a shipment of coiled elm hoops from Cardington, Ohio, to Green Bay, Wis.

R. B. Coapstick for complainant.

F. G. Wright and *William Ellis* for Chicago, Milwaukee & St. Paul Railway Company.

William Maier for Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

In March, 1907, complainant shipped from Cardington, Ohio, to Green Bay, Wis., one carload of coiled elm hoops, weight 24,000 pounds, via the lines of the defendant carriers. The defendant, Cleveland, Cincinnati, Chicago & St. Louis Railway, handled the shipment from Cardington, Ohio, to Coster, Ill., and the other two defendants from that point to destination.

Complainant alleges that the through rate of 24½ cents per 100 pounds charged on the shipment was unjust and unreasonable to the extent that it exceeded a combination of 20 cents per 100 pounds based on Coster, Ill. He asks reparation for the difference between the through rate and said combination as applied to the weight of the shipment, amounting to \$10.80.

At the time the shipment moved the rate from Cardington, Ohio, to Coster, Ill., in carloads, minimum weight 24,000 pounds, when destined beyond, was 11½ cents per 100 pounds; from Coster, Ill., to Green Bay, Wis., the carload rate, minimum weight 30,000 pounds, was 8½ cents. This was a proportional rate, applicable to shipments originating east of Coster. It will be noticed that there is a difference

in the minimum carload weights named in these tariffs, but there is nothing in the record to indicate that either of the minima was unjust or unreasonable as applied to the shipment in question.

Green Bay is a Winona rate point, and the Commission adheres to its ruling in the case of *Oshkosh Logging Tool Co. v. C. & N. W. Ry. Co.*, 14 I. C. C. Rep., 109, relating to through rates from the Central Freight Association territory to that district.

The total charges, based upon the 24½-cent rate, amounted to \$58.80. The proportional rate of 11½ cents per 100 pounds from Cardington, Ohio, to Coster, Ill., based on a minimum weight of 24,000 pounds, would make a charge of \$27.60. The proportional rate of 8½ cents per 100 pounds from Coster, Ill., to Green Bay, Wis., on a minimum weight of 30,000 pounds, would make a charge of \$25.50. The total charges resulting from the application of said combination would have been \$53.10. Therefore the charges resulting from the application of the through rate exceeded those which would have resulted from the application of the combination in the sum of \$5.70. The complainant asks reparation solely on the basis of the combination referred to, and defendants admit the reasonableness of the demand to the extent of \$5.70. Effective March 29, 1909, defendants established a through rate on coiled elm hoops from Cardington, Ohio, to Green Bay, Wis., of 20 cents per 100 pounds, minimum weight east of junction 24,000 pounds and west thereof at weights varying from 20,000 to 30,000 pounds, according to the size of the car.

Upon consideration of the foregoing facts, we find that defendants' through rate of 24½ cents per 100 pounds exacted on shipments of coiled elm hoops from Cardington, Ohio, to Green Bay, Wis., was unjust and unreasonable, to the extent that it exceeded the combination based upon the minimum weights applicable under the tariffs naming the combination, and that complainant is entitled to reparation against the defendants in the sum of \$5.70, with interest. An order will be entered in accordance with these views.

16 I. C. C. Rep.

No. 1947.

LEE-WARREN MILLING COMPANY

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY
ET AL.

Submitted March 30, 1909. Decided June 21, 1909.

Rate on bran from Salina, Kans., to Hugo, Okla., found unjust and unreasonable to the extent that it exceeds the combination of locals. Reparation awarded.

John A. Wilson for complainant.

E. B. Peirce and *W. F. Dickinson* for defendants.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

Complainant corporation is engaged in milling grain at Salina, Kans. It shipped 2 cars of bran over the lines of the defendants, from Salina, Kans., to Hugo, Okla., one car on November 4 and the other on December 3, 1907, each weighing 30,000 pounds. Freight charges were collected at destination at the rate of 34 cents per 100 pounds, amounting to \$204. The rate charged is alleged to be unjust and unreasonable, to the extent that it exceeded the combination of locals of 24½ cents per 100 pounds, based on Wister, Okla. Reparation is asked in the sum of \$57.

The through rate in force at the time the shipments moved was 34½ cents per 100 pounds (Rock Island Tariff, I. C. C. No. 8070), based on a rate of 23 cents Salina to Fort Smith, and 11½ cents from Fort Smith to Hugo. At the hearing various possible routes and rates were pointed out, but it appears that the combination via Wister is the lowest, although for the convenience of the carriers the shipments moved through Holdenville.

The combination of the locals via Wister is arrived at in the following manner: Rock Island Tariff, I. C. C. No. 7979, applies Kansas City rate to Salina, and the rate on bran from Kansas City to Wister, Okla., is 17 cents per 100 pounds; Frisco Tariff, I. C. C. No. 5130, names rate of 7½ cents per 100 pounds from Wister to Hugo.

The defendants contend that the 17-cent rate from Salina to Wister is a maximum rate and not a specific rate, and that the distance tariff rate, Salina to Wister, of 23 cents per 100 pounds should apply. This contention is not tenable. While it is true that the Commission has condemned maximum rate clauses in tariffs, it is clear that at the time these shipments moved, if they had been billed to Wister, the 17-cent rate, and no other, would have applied; and, again, distance tariffs, under the Commission's rules, are to be applied only when no other rates are provided, or when, under special provision in the tariff therefor, they make lower than a specific rate shown in the same tariff.

The rate on bran from Salina to Forney, Okla., the latter point being 6 miles from Hugo and on the line of the defendant, St. Louis & San Francisco Railroad, is the same as the rate to Fort Smith, Ark., 23 cents per 100 pounds, and the arbitrary of $11\frac{1}{2}$ cents, added to the Fort Smith rate to make the through rate to Hugo, seems to be excessive and is not seriously defended. The rate per ton per mile upon bran of $24\frac{1}{2}$ cents per 100 pounds from Salina to Hugo, a distance of 598 miles via Wister, is a trifle more than 8 mills. A larger ton-per-mile revenue would result from the mileage via Holdenville, the route the shipment moved.

In view of all the facts we find that defendants' through rate of $34\frac{1}{2}$ cents per 100 pounds on bran in carloads, under present minimum weight regulations, from Salina, Kans., to Hugo, Okla., was unjust and unreasonable to the extent that it exceeded a rate of $24\frac{1}{2}$ cents per 100 pounds in carloads, which we find to be a just and reasonable rate to apply in the future.

We also find that complainant is entitled to reparation in the sum of \$57, with interest, being the difference between a rate of $24\frac{1}{2}$ cents and the rate actually charged, as applied to the weight of the shipment, for which an order will issue against the defendants. The defendants will be required to publish and keep in force the rate of $24\frac{1}{2}$ cents between the points involved for a period of two years from the effective date of the order to be entered herein. An order will be entered in accordance with these views.

No. 2093.

J. G. ROGERS

v.

OREGON RAILROAD & NAVIGATION COMPANY ET AL.

Submitted May 7, 1909. Decided June 21, 1909.

Defendants' rate of \$1.11 per 100 pounds for the transportation of one carload of household goods from Spokane, Wash., to Medford, Oreg., found on the record in the case not to be unreasonable or unlawful.

W. G. Estep for complainant.

W. W. Cotton, F. C. Dillard, and James G. Wilson for defendants.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

This is a complaint that the charge by the defendants of \$1.11 per 100 pounds on a shipment of a carload of household goods from Spokane, Wash., to Medford, Oreg., is unreasonable to the extent that it exceeds 71 cents. It is alleged in the complaint that the through rate from Spokane to San Francisco is 71 cents per 100 pounds and that a higher charge to Medford, an intermediate point, is in violation of the fourth section of the act. It was contended at the hearing that the tariffs of the defendants provide for the application of the San Francisco rates to points intermediate.

August 15, 1908, complainant delivered to the Oregon Railroad & Navigation Company at Spokane a carload of household goods for shipment to Medford, situated south of Portland on the line of the Southern Pacific. There was applied to the shipment the Oregon Railroad & Navigation Company's published 55-cent Class-B rate from Spokane to Portland and the 56-cent Class-B rate of the Southern Pacific from Portland to Medford. The shipment moved under a 20,000-pound minimum. At the same time there was in effect a through rate on household goods from Spokane to San Francisco of 71 cents. This rate, it is asserted by the defendants, was made to meet the water rate from Portland and Seattle in combination with the Class-B rate from Spokane to these points. An examination of the tariffs on file shows that at the time the shipment moved the

71-cent rate to San Francisco was not applicable to Medford or other points intermediate not named in the tariff.

It is to be remembered that the rate applied to this shipment was the regular Class-B rate from Spokane to Portland and from Portland to Medford. The rate to San Francisco is made under circumstances of water competition and therefore may be lower than to intermediate points where such competition does not exist, without violating the provisions of the fourth section. On this record we are unable to find that the complainant was subjected to unreasonable or unlawful charges. The complaint will therefore be dismissed.

No. 2060.

W. J. GUTHRIE

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY
ET AL.

Decided June 21, 1909.

Complaint attacking legality of rate assessed on a shipment of household goods from El Reno, Okla., to Cabin Creek, Ark., dismissed because of failure of complainant to appear at hearing.

No appearance for complainant.

C. H. Jackson for St. Louis, Iron Mountain & Southern Railway Co.

E. B. Peirce and *Thomas S. Buzbee* for Chicago, Rock Island & Pacific Railway Company and St. Louis & San Francisco Railroad Company.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

Complainant attacks the legality of the rate assessed on a shipment of household goods moving via defendants' lines from El Reno, Okla., to Cabin Creek, Ark., in June, 1907, and seeks reparation for the alleged unreasonable charges collected. Complainant not appearing at the hearing, the Commission has no proper basis for an order. The complaint will therefore be dismissed.

No. 1791.
SWIFT & COMPANY
v.
CHICAGO & ALTON RAILROAD COMPANY.

Submitted June 14, 1909. Decided June 21, 1909.

Tariff rule fixing 15,000 pounds as the minimum carload of dairy products, poultry, fresh meats, etc., for which carrier will furnish icing at its expense found not to be unreasonable.

A. H. and Henry Veeder for complainant.

Winston, Payne, Strawn & Shaw for defendant.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

This complaint, filed October 13, 1908, alleges that defendant's tariff provision which was in force until April 1, 1908, and which provided that defendant would furnish icing for carload shipments of dairy products, poultry, fresh meats, etc., destined to points east of the Indiana-Illinois state line on a minimum carload weight of 15,000 pounds, was unreasonable, and that complainant had been charged for icing upon shipments which moved between July 10, 1907, and April 1, 1908, the sum of \$286.25 in excess of what it would have been charged had defendant's rule provided that defendant would furnish icing on minimum carload weight of 10,000 pounds, which minimum it is alleged would have been reasonable.

The case was set for hearing in March, 1909, and hearing was postponed on request of the parties. It was again set for hearing in April, and again the parties requested postponement, which was denied.

At the hearing the parties appeared by counsel, who suggested that the complaint be transferred to the informal docket, with the idea of having it disposed of on a stipulation that might be made on such informal presentation. It was pointed out that the case could, with equal ease and propriety, be disposed of on the formal docket upon the pleadings and a stipulation which they might enter

into to that effect, and it was there agreed that the case would be so submitted. Such stipulation is now before us, and the case is submitted upon that and the pleadings.

The facts shown are as follows:

Complainant, a corporation, is engaged in general meat-packing business and has branch houses in various parts of the United States. Defendant is a common carrier, subject to the act to regulate commerce.

On or about August 15, 1904, defendant's tariff, I. C. C. No. 1421, in connection with numerous other lines shown therein, provided that foreign refrigerator cars would be furnished for loading at points on defendant's line in Illinois for shipments of dairy products, dressed poultry, fresh meats, etc., destined to points east of the Indiana-Illinois state line, on the basis of minimum carload weight of 15,000 pounds, which minimum weight was stated to be for use when the transportation company assumed the cost of icing. This tariff regulation remained in force and effect until April 1, 1908.

On dates between July 10, 1907, and April 1, 1908, complainant shipped via defendant's line from East St. Louis, Ill., to various points in the east certain carloads of dressed poultry and dairy products, as specified in detailed statement, freight receipts, and freight bills attached to the complaint. These shipments required refrigeration or icing, and complainant requested defendant to furnish same. Defendant declined to furnish at its expense such icing for these shipments, for the reason that the cars were not loaded to the minimum weight of 15,000 pounds, although each of said cars was loaded to or beyond a minimum of 10,000 pounds. This refusal on part of defendant to furnish icing required complainant to provide same, and it is agreed that the actual, just, and reasonable cost thereof on the shipments referred to was \$286.25.

During this time certain other lines leading east from East St. Louis, Ill., to wit, the Baltimore & Ohio Southwestern Railroad, the Cleveland, Cincinnati, Chicago & St. Louis Railway, the Wabash Railroad, and the Vandalia Railroad, had in effect tariffs which provided that said railroads would furnish icing for carload shipments of dressed poultry, dairy products, etc., from East St. Louis to eastern points on cars loaded to a minimum of 10,000 pounds.

Effective July 10, 1907, the Chicago, Burlington & Quincy Railroad, a competitor of defendant for this business, provided that it would furnish icing for such shipments on cars loaded to a minimum of 15,000 pounds, and effective September 19, 1907, it reduced this minimum to 10,000 pounds.

The Illinois Central Railroad, also a competitor of defendant for this business, had during the period covered by the shipments in

16 I. C. C. Rep.

question, and still has, a provision that it will furnish icing for such shipments on a carload minimum of 15,000 pounds.

On April 1, 1908, a joint tariff to which defendant and other carriers are parties, amendment No. 51 to W. T. L., I. C. C. No. 708, provides that carriers, parties to the tariff, will furnish ice for such shipments when loaded to or exceeding a minimum of 10,000 pounds per car, which rule is still in effect.

In the original complaint herein complainant alleged that the 15,000-pound minimum was unreasonable in and of itself and relatively as compared with the 10,000-pound minimum of other carriers. Defendant, answering, denied that the 15,000-pound minimum was unjust or unreasonable either in itself or relatively. No testimony has been offered to show that such charge was unreasonable in and of itself, and no such admission has been made. The case therefore rests entirely upon the facts that the shipments were made and that other carriers competing for the same business during the same period furnished icing for such shipments on a minimum carload weight of 10,000 pounds.

As has so often been said, a carrier may for competitive reasons voluntarily do things which it may not lawfully be compelled to do; and we must here consider whether or not defendant should respond to demand for reparation because in a strongly competitive situation and for competitive reasons it finally elected to reduce its minimum from 15,000 pounds to 10,000 pounds. The shipments in question moved from East St. Louis, Ill., to Philadelphia, Pa., and other eastern points. There were four available routes via which the 10,000-pound minimum applied, but for some reason complainant elected to ship via the defendant's line, where a 15,000-pound minimum was in effect.

The act confers upon the Commission authority to investigate complaints alleging unreasonable charges, and, after full hearing on formal complaint, to condemn such charges as are found to have been unreasonable, to award reparation thereunder, and to prescribe a reasonable charge for the future. Out of this authority springs the right to condemn a charge as unreasonable, to award reparation thereunder, and to prescribe the charge for the future in so-called informal cases in which the parties present to the Commission an agreed statement of facts which, if presented in a formal complaint, would lead the Commission to take the same action. No reparation is or should be awarded on such informal proceedings which would not be awarded under the same set of facts in a contested case and in face of the defendant's opposition instead of its admission. The Commission can not and will not accept as conclusive any stipulation of parties as to the reasonableness of a rate

or a transportation regulation. The Commission's conclusions on such matters must be reached with a due consideration for the conclusions which it has already announced on the same subject and for the knowledge which it has gathered with relation thereto in other cases and investigations. The willingness of a shipper to receive, and of a carrier to pay, reparation upon certain traffic or under certain rates can be approved by this Commission only under a clear and decisive showing of facts which would lead the Commission to award that reparation in opposition to that carrier's wishes, and under which it would also award reparation to all others who might have shipped during the same period under the same rate and under substantially similar circumstances and conditions.

The Commission has had occasion in numerous instances to consider the reasonableness of carriers' charges for refrigeration or icing of carload shipments of perishable articles, and in accordance with the conclusions therein reached it can not now find that the tariff regulation herein attacked and under which these shipments were made, to the effect that carrier would furnish ice only on a minimum carload weight of 15,000 pounds, was unreasonable. *Georgia Peach Growers' Asso. v. A. C. L. R. R. Co.*, 10 I. C. C. Rep., 255; *Consolidated Forwarding Co. v. Southern Pacific Co.*, 10 I. C. C. Rep., 590; *Waxelbaum & Co. v. A. C. L. R. R. Co.*, 12 I. C. C. Rep., 178; *American Fruit Union v. C., N. O. & T. P. Ry. Co.*, 12 I. C. C. Rep., 411; *Florida Fruit and Vegetable Shippers' Protective Asso. v. A. C. L. R. R. Co.*, 14 I. C. C. Rep., 476; *Ozark Fruit Growers' Asso. v. St. L. & S. F. R. R. Co.*, 16 I. C. C. Rep., 106. True, other lines had at the same time a lower minimum; but certainly there is no requirement in the law that the charges of one carrier shall always be exactly equal to those of a competing carrier. The law requires that the charges of each shall be reasonable. What is reasonable for one might not be reasonable for the other. Each of them is bound by its own lawfully filed and published tariffs, and the Commission can not accept the theory that one carrier's rate is unreasonable simply and solely because another carrier had at the time a lower rate. Neither can the Commission permit itself to be made an agency through which the rates of competing carriers are equalized by adjustments made subsequent to the performance of the service simply because the rates of one or the other were at the time "out of line" with those of its competitor. The shipper should give his shipment to the carrier that has at that time the lowest lawfully published applicable rate, and failing to do this, he should not expect the Commission later to authorize refund for the purpose of equalizing the rate of the line to which he gave his business with the lower lawful rate of a competing line which he might have used.

The carrier whose lawful tariff rate is higher than that of a competing line has no right to solicit or accept shipment with the understanding or expectation that an order of reparation will be sought at the hands of the Commission for the purpose of equalizing to the shipper a rate which he could have secured by giving his shipment to another carrier.

It is not understood that complainant was or would have been refused icing for shipments which actually weighed less than 15,000 pounds if willing to pay transportation charges upon 15,000 pounds. The Commission held recently in informal complaint No. 9926, *Swift & Company v. Toledo, St. Louis & Western Railroad Company*, that under a tariff provision similar to that here considered the shipper was entitled to the icing of a shipment which actually weighed less than the minimum fixed, provided transportation charges were paid upon the full amount of the prescribed minimum.

Inasmuch as the Commission can not find that the 15,000-pound minimum was unreasonable, it follows that the complaint must be dismissed, and such order will be entered.

16 I. C. C. Rep.

No. 2284.

HEWITT & CONNOR

v.

CHICAGO & NORTH WESTERN RAILWAY COMPANY.

Submitted June 3, 1909. Decided June 21, 1909.

Charges upon a mixed carload of grain found unreasonable. Reparation awarded.

Leonard Brisley for complainant.

S. A. Lynde for defendant.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

By agreement of the parties this case, the petition in which was filed April 1, 1909, is submitted on the pleadings.

In May, 1907, defendant transported for complainant, from Arlington, S. Dak., to Milwaukee, Wis., a car in which there was loaded 32,900 pounds of wheat and 29,220 pounds of rye, the grains being separated by bulkhead. Charges were assessed on basis of 19 cents per 100 pounds on 54,000 pounds of wheat and 18 cents per 100 pounds on the same amount of rye, or a total of \$199.80. The charges were in accord with tariff rates and rules in effect at time shipment moved. It is alleged that such a rule was unjust and unreasonable and that reasonable total charges should have been on basis of actual weight at the rate applicable to each class of grain, and reparation in the sum of \$84.78 is asked.

Defendant admits the shipment, but avers that, inasmuch as its rules and regulations required the sacking of all but one of the classes of grain when shipped in mixed carload, and did not provide for separation by bulkhead, the shipment should not have been accepted unless the requirement for sacking was complied with. However, it admits the charges and their unreasonableness, and expresses willingness to submit to the issuance of an order of reparation based on the higher rated grain, i. e., wheat, as otherwise

complainant would get the benefit of a lower rate than it would have had had one of the grains been sacked as the rules then in effect required. The present rule which became effective September 1, 1908, is as follows:

Grain, mixed C. L., or grain and seeds, mixed C. L.—On shipments of mixed carloads of grain, mixed carloads of grain and seeds, except garden seed, and of mixed carloads of seeds, except garden seeds, from one consignor to one consignee, the highest carload rate and minimum weight applicable on the grain or seed contained in the car will be charged on the entire C. L., provided that all or all but one of the different kinds of grain or seed are sacked except that on mixed carloads of coarse grain, viz: Corn, oats, wheat, rye, or barley, bulkheads may be used to separate the grain, provided shipments are made at owner's risk of mixing, and the partitions are provided by or at the expense of the shipper.

Confined strictly to the facts in this case as disclosed by the pleadings, the Commission is of the opinion, and finds that the total charges assessed were unjust and unreasonable to the extent they exceeded the charges on the actual weight of the shipment at 19 cents per 100 pounds and that complainant is entitled to reparation, measured by such difference, in the sum of \$81.77, with interest. And it is so ordered.

16 I. C. C. Rep.

No. 2049.
SUNDERLAND BROTHERS COMPANY
v.
CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL.

Submitted April 9, 1909. Decided June 21, 1909.

Reparation awarded for exaction of unreasonable charges on one carload of rock salt shipped from Lyons, Kans., to Lusk, Wyo.

C. E. Child for complainant.

B. T. White for Chicago & North Western Railway Company.

REPORT OF THE COMMISSION.

LANE, Commissioner:

March 24, 1908, complainant caused to be consigned to itself, at Lusk, Wyo., a carload of rock salt, weight 40,000 pounds, from Lyons, Kans. The shipment was routed over the Atchison, Topeka & Santa Fe and the Chicago & North Western. The former charged its published rate of 10 cents per 100 pounds from Lyons to Superior, Nebr., of which no complaint is made. The Chicago & North Western charged 44 cents for its haul from Superior to Lusk. Complainant alleges that the latter charge was unreasonable to the extent that it exceeded 28 cents. Reparation in the sum of \$64 is asked.

It appears that for many years prior to December 24, 1907, the rate on rock salt in carloads from Superior to Orin Junction, a point in Wyoming on the line of the Chicago & North Western, 41 miles west of Lusk, was 28 cents. Although there was no long-and-short-haul clause in its earlier tariffs, it was the practice of the defendant to apply the longer-distant rate to points intermediate. By Chicago & North Western tariff, I. C. C. No. 6075, the rates named therein were by special provision made maximum rates to be applied in the same direction to or from intermediate points. December 4, 1907, supplement No. 6 to the above tariff was published which canceled the provision with respect of the application of rates to intermediate points.

This left no specific rate to Lusk at the time the shipment moved and the distance tariff of the Chicago & North Western was applied which yielded the 44 cents charged.

Orin Junction is at the junction of the Colorado & Southern and the Chicago & North Western, and it was stated by the latter's general freight agent at the hearing that the 28-cent rate to that point was a proportional rate not intended originally for basing purposes or to be made applicable to points intermediate.

The Chicago & North Western expresses a willingness to pay the reparation asked by complainant on the ground that so long as the 28-cent rate was made to Orin Junction, there is no reason why it should not have been made applicable to Lusk, an intermediate point. The carrier does not admit that the 28-cent rate is a reasonable rate to Orin Junction. It is insisted that any rate less than the 35-cent rate now in effect is unreasonably low.

The exaction of the 44-cent rate by the Chicago & North Western on the shipment in controversy while there was a rate of 28 cents to Orin Junction, a more distant point on the same line so far as appears, was in violation of the fourth section of the act and therefore unlawful. It might also be declared unlawful because discriminatory. For these reasons we find that the charge applied to the shipment was, when exacted, unlawful, and that complainant is entitled to an award for reparation from the Chicago & North Western Railway Company in the sum of \$64 with interest.

Complainant at the hearing expressed itself as satisfied with the 35-cent rate now applicable to Douglas and to points intermediate, including Lusk. Under these circumstances, an order will be issued requiring the Chicago & North Western Railway Company to establish and maintain on shipments of rock salt in carloads from Superior, Nebr., to Lusk, Wyo., for a period of not less than two years from August 16, 1909, a rate that shall not exceed the rate contemporaneously maintained on the same commodity from Superior to Douglas, Wyo.

No. 1981.
DARBYSHIRE & EVANS
v.
EL PASO & SOUTHWESTERN RAILROAD COMPANY.

No. 2090.
SAME
v.
SAME.

Submitted May 20, 1909. Decided June 21, 1909.

Rates for the transportation of alfalfa hay in carloads from Deming, N. Mex., to Bisbee, Ariz., and from El Paso, Tex., to Douglas and Bisbee, Ariz., found unreasonable. Reparation awarded.

Rufus B. Daniel for complainant.
Hawkins & Franklin for defendant.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

Complainant assails defendant's rate of \$6 per net ton on alfalfa hay (carloads, minimum weight 19,000 pounds), from Deming, N. Mex., to Bisbee, Ariz., and from El Paso, Tex., to Douglas and Bisbee, Ariz. The distance between Deming and Bisbee is 187 miles; from El Paso to Douglas 217 miles, and from El Paso to Bisbee 247 miles.

Upon full consideration of the facts we find the rates charged to be excessive and unreasonable, and that the rate from Deming to Bisbee should not exceed \$3.80 per net ton, and the rates from El Paso to Douglas and Bisbee, respectively, should not exceed \$4.50 per net ton. Complainant shipped 3 carloads of hay aggregating 70,200 pounds in weight, from Deming to Bisbee, charges being collected at the rate of \$6 per net ton. Reparation with interest will be awarded in the amount of the difference between the charges collected on these shipments and the charges which would accrue under the rate herein fixed. An order will be issued accordingly.

No. 2018.
INTERSTATE REMEDY COMPANY
v.
AMERICAN EXPRESS COMPANY.

Submitted March 11, 1909. Decided June 21, 1909.

1. The date of original shipment determines the rights, privileges, and obligations attaching to that shipment throughout its transportation.
2. Prior to May 20, 1908, defendant's tariffs provided certain charges for the return shipment of C. O. D. packages of medicine; effective May 20, 1908, these tariff provisions were canceled and provision made for the assessment of regular merchandise rates on such traffic; *Held*, That as to shipments moving prior to May 20, 1908, and returning subsequent thereto, the tariff provisions in effect prior to that date govern the assessment of charges.

Donald Fuller and Stevenson, Carpenter & Butzel for complainant.
T. B. Harrison, jr., and Russell, Campbell, Bulkely & Ledyard for defendant.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

This case is submitted to the Commission for determination upon the allegations contained in the complaint and answer and upon a statement of facts agreed to by the parties.

The complainant is engaged in business in Detroit, Mich., and shipped packages of medicine via the defendant's line under tariff filed by the defendant November 15, 1906, and canceled May 20, 1908. This tariff contains the following:

Medicine packages.—Originally shipped by medicine companies at merchandise graduated rates, prepaid or guaranteed, may be returned with charges to collect, in addition to the outward charge, if any, as follows:

	Cents.
Packages weighing not over 2 pounds.....	10
Over 2 pounds and not over 3 pounds.....	15
Over 3 pounds and not over 4 pounds.....	20

When carried by two companies, charge 5 cents more than shown above, the charge thus paid to be divided equally, the delivering company being entitled to the odd cent.

These rates do not apply to packages containing electric belts or other mechanical appliances.

Payment of the outgoing and return charges on all packages returned was guaranteed to defendant by complainant. The defendant sends out all C. O. D. packages with printed labels stating that if not delivered to consignee they must be returned within thirty days of date of shipment. On April 14, 1908, complainant received from the defendant written notice that on and after May 20, 1908, the tariff classifications above given would be no longer in effect; that all outstanding packages not returned before May 20, 1908, would be charged for at the regular merchandise rates of express companies in accordance with an amendment of its tariffs and classifications duly filed with the Commission and effective on and after May 20, 1908.

Previous to May 20, 1908, the complainant shipped over the lines of the defendant 4,516 packages which were not returned until June 13 and after; that of this number 1,577 packages were shipped on and previous to April 14, 1908; that the balance, 2,939 packages were shipped after April 14, 1908, but previous to May 20, 1908; that at least 1,577 of the 4,516 packages were not returned within thirty days of the date of shipment. The complainant has paid under protest return charges on the 4,516 packages at the regular merchandise rates, which sum amounts to \$632.77 more than would have been due under the tariff in effect prior to May 20, 1908.

Complainant filed a copy of a contract between it and the defendant, by the terms of which the complainant agrees to furnish a bond conditioned upon the payment of return charges on C. O. D. packages, and the defendant agrees to pay for all packages damaged or not returned. This contract contains further stipulations under which these shipments were moved. Private contracts of this character can have no effect upon the application of the lawful tariff governing a shipment. The tariff is as much a part of the law as though it were read into the law itself, and we must look to the lawful tariff in effect at the time the shipments moved. Moreover, the fact that the defendant gave notice to complainant of a change of tariff on a future date is of no consequence. The shipments in question were all shipped out prior to the date of change in tariff on May 20, 1908. The only question before us is whether these packages were returned to the complainant at such time and under such conditions as to be governed by the tariff of November 15, 1906.

Rule 11 of the tariff, filed November 15, 1906, in effect at the time of these shipments, relates to C. O. D. matter, and paragraph (i) thereof reads as follows:

If C. O. D. matter is refused, or can not be delivered within twenty-four hours, the shipper must be immediately notified, and if not disposed of within thirty days of such notice it may be returned subject to charges both ways. If the shipper, after receiving notice of nondelivery from destination agent, requests that the shipment be

held for a further period, it may be granted, but it must not be held longer than sixty days after date of shipment, and forwarding agents are forbidden to make any agreement with shippers to hold goods for a longer period.

While the return rates named in the tariff of November 15, 1906, apply to packages "prepaid or guaranteed," and it appears that complainant had guaranteed to defendant payment of all outgoing and return charges, yet the stipulation shows that these shipments were regarded by both parties as what is termed in the tariff "C. O. D. shipments." Therefore Rule 11, governing C. O. D. shipments, applies to the shipments in this case.

The tariff makes it mandatory upon the express company to immediately notify the shipper in case of nondelivery. Nothing is said in the statement of facts agreed to and filed with the Commission as to whether or not the express company gave this notice, but as such notice was required by the tariff, it will be assumed that it was duly given to the complainant. From the language of Rule 11, it is clearly the intention to require the express company to hold the C. O. D. shipment a reasonable time at the convenience of the shipper who is given notice and opportunity to order proper disposition thereof. The express company must hold the shipment, subject to the orders of the shipper, for a period of thirty days from notice of failure of delivery, which is long enough to afford the shipper time to ultimately dispose of his shipment. If, at the expiration of the thirty days, the shipper has taken no action with regard to the disposition of an undelivered C. O. D. shipment, he can claim no further rights under the rule. The express company, however, under the rule, at the request of the shipper, may extend the period not exceeding sixty days, but this is entirely within the discretion of the express company. The statement of facts filed gives no information as to what shipments were ordered held or returned by the complainant.

A schedule of rates extended by a carrier to the shipping public may be canceled upon giving thirty days' notice in conformity with the law. But such cancellation is not to be construed as a withdrawal of all rights arising under such tariff to those who have availed themselves of its provisions prior to the date that such tariff dies. If this were not so, a shipper could never know whether rights and privileges extended by the carriers in their lawful tariffs would be available for the period fixed therein. It would be manifestly within a carrier's power to withdraw, by cancellation, at any time such rights as the tariffs offered at the time of shipment, thus leaving the shipper at the mercy of the carrier until the ultimate arrival of his freight at destination. This is a view of the law which would be utterly impracticable and vicious in its effects. The shipper must know at the time of tender of shipment from the tariffs themselves what rate he must pay

and what rights thereunder he may secure. If there is offered to him under the tariff a right of stopping in transit, reconsignment, storage, or return of freight, he is entitled to the use of such privilege, even though it may later be canceled out of the tariff before the time allowed for the exercise of such right has expired. The date of original shipment determines the rights, privileges, and obligations attaching to that shipment throughout its transportation; and this must be determined by the tariff in force upon that date.

Applying these principles to the facts here presented, we hold that the complainant was entitled to enjoy the right of return of shipment at the lower rate named upon all shipments which moved out prior to May 20, 1908. Rule 11 gave what might be called a round-trip rate on freight of a certain character, and the cancellation of this rule served to end the use of such rate on May 20, but did not serve to deny the benefit of its use to those who had shipped thereunder prior to that time.

The question is not raised in this case as to the legality of such a rule and rate as here involved, and we do not pass thereon. But even if it should eventually be held that a carrier may not lawfully make a lower rate upon a returned shipment than would apply if it were an original shipment, we are of opinion that the carrier may not plead the unlawfulness of its tariff to avoid extending the benefit thereof to a shipper. While it has been repeatedly emphasized by the Commission that the shipper is put upon notice of the rate by the publication of the tariff, it has not been held that a shipper must determine for himself the lawfulness of a rate, regulation, or practice, upon his peril. The responsibility rests upon the carrier to have lawful rates and rules in effect, and every shipper may with safety rely upon such rates without fear that they will be withdrawn as illegal after he has made shipment thereon, resting in the confidence that they are lawful so long as they are in force. If subsequently found to be unlawful, the carrier is subject to penalty for the institution and maintenance of such rates or rules, but the law does not contemplate that the shipper shall move upon any other theory than that the provisions of the carrier's tariff are in full compliance with the law's demands. This case involves nothing but an overcharge, and the carrier may adjust the matter with complainant in accordance with the views here expressed without further reference to the Commission.

No. 2415.
MINERAL POINT ZINC COMPANY
v.
WABASH RAILROAD COMPANY ET AL.

Submitted April 27, 1909. Decided June 22, 1909.

Defendants' class rate for the transportation of 2 carloads of sulphuric acid from Howe, Ill., to Aetna, Ind., found unreasonable and reparation awarded.

Walter D. Main for complainant.

N. S. Brown for Wabash Railroad Company.

William Ellis for Chicago, Milwaukee & St. Paul Railway Company.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

On November 14 and December 12, 1908, complainant shipped over defendants' lines from Howe, Ill., to Aetna, Ind., 2 carloads of sulphuric acid, of the aggregate weight of 147,400 pounds. The rate lawfully applicable to these shipments was a class rate of 13 cents per 100 pounds, which resulted in total freight charges of \$191.62. Complainant alleges and defendants admit that the class rate of 13 cents was unreasonable and that the charge exacted for this transportation should not have exceeded 10 cents per 100 pounds. By tariff effective February 15, 1909, prior to the filing of this complaint, defendants established a commodity rate applicable to the transportation of sulphuric acid, in carloads, from Howe to Aetna, of 10 cents per 100 pounds, and have indicated their willingness to make reparation upon the basis of that rate.

Upon this record we find that the rate of 13 cents was unreasonable to the extent that it exceeded 10 cents per 100 pounds, and that complainant is therefore entitled to reparation in the sum of \$44.22, with interest, that amount representing the difference between said rates of 13 cents and 10 cents per 100 pounds as applied to the shipments in question. An order will be entered accordingly.

16 I. C. C. Rep.

No. 1715.

LINDSAY BROTHERS

v.

GRAND RAPIDS & INDIANA RAILWAY COMPANY ET AL.

Submitted February 10, 1909. Decided June 22, 1909.

Defendants' through rates for the transportation of boilers (under 10 feet in length) and parts from Kalamazoo, Mich., to Blue Mounds and Mount Horeb, Wis., found unreasonable to the extent that they exceeded the combination of local rates. Reparation awarded.

Herbert F. Lindsay for complainant.

S. A. Lynde for Chicago & North Western Railway Company.

James H. Campbell for Grand Rapids & Indiana Railway Company.

Kretzinger & Rooney for Grand Trunk Western Railway Company.

F. W. Stevens and *George D. Van Dyke* for Pere Marquette Railroad Company.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

On May 31, 1907, complainants had shipped from Kalamazoo, Mich., to Blue Mounds, Wis., one boiler (under 10 feet in length) and parts, weighing 1,300 pounds, and on April 4, 1908, they had shipped from Kalamazoo to Mount Horeb, Wis., one boiler (under 10 feet in length) and parts, weighing 4,200 pounds. The former shipment moved over the Grand Rapids & Indiana Railway, Grand Trunk Western Railway, and Chicago & North Western Railway; the latter over the Grand Rapids & Indiana Railway, Pere Marquette Railroad, and Chicago & North Western Railway. The rate lawfully applicable to this traffic was a joint through class rate of 65 cents per 100 pounds, resulting in an aggregate charge upon the two shipments of \$35.74. At the same time the combination of local charges applicable to the transportation of boilers (under 10 feet in length) and parts from Kalamazoo to Blue Mounds and Mount Horeb,

based upon Chicago or Milwaukee, was 52½ cents per 100 pounds. Complainants allege that the through rate of 65 cents was unreasonable to the extent that it exceeded the combination upon Chicago and Milwaukee and ask reparation upon the shipments mentioned.

Defendants have presented no facts which justify a through rate in excess of the combination of locals, and have virtually admitted the unreasonableness of the 65-cent rate and indicated their willingness to make reparation on basis of combination of the locals upon proper authority from the Commission. We therefore find that the rate of 65 cents was unreasonable to the extent that it exceeded 52½ cents; that a rate of 52½ cents should be established for the future; and that complainant is entitled to reparation in the sum of \$6.87, with interest, that amount representing the difference between said rates of 65 cents and 52½ cents as applied to the shipments in question. An order will be entered accordingly.



No. 1751.

SWIFT & COMPANY

v.

TEXAS & PACIFIC RAILWAY COMPANY ET AL.



Submitted June 1, 1909. Decided June 22, 1909.



Defendants' combination rates for the transportation of fresh meat and packing-house products from Fort Worth, Tex., to Rocky Mount, N. C., found unreasonable and reparation awarded.

Albert H. & Henry Veeder and M. Weigle for complainant.

L. Green for Southern Railway Company.

E. L. Sargent for Texas & Pacific Railway Company.

R. A. Brand for Atlantic Coast Line Railroad Company.

E. Schryver for Alabama Great Southern Railroad Company.

T. F. Steele for New Orleans & Northeastern Railroad Company, Alabama & Vicksburg Railway Company, and Vicksburg, Shreveport & Pacific Railway Company.

REPORT OF THE COMMISSION.

KNAPP, *Chairman*:

During the period between May 3, 1907, and July 27, 1907, complainant shipped from Fort Worth, Tex., to Rocky Mount, N. C., 13 carloads of fresh meat and packing-house products, the route over which the shipments moved being composed of the Texas & Pacific Railway, Fort Worth to Shreveport, La.; Vicksburg, Shreveport & Pacific Railway, Shreveport to Vicksburg, Miss.; Alabama & Vicksburg Railway, Vicksburg to Meridian, Miss.; Alabama Great Southern Railroad, Meridian to Birmingham, Ala.; Southern Railway, Birmingham to Selma, N. C.; and Atlantic Coast Line Railroad, Selma to Rocky Mount. At the time these shipments moved there was no joint rate in force from Fort Worth to Rocky Mount, and the rates applied were the combinations, based upon Vicksburg, of \$1.07 per 100 pounds for fresh meat and 66 cents per 100 pounds for packing-house products, resulting in an aggregate charge of \$2,961.69. Complainant alleges that the rates so charged were unreasonable, basing its claim mainly upon the fact that combination rates of 77 cents on fresh meat and 58 cents on packing-house products were available via Memphis over a route composed in part of carriers defendants in this proceeding. By tariff effective October 21, 1907 (prior to the filing of this complaint), the defendants established via the Vicksburg route the rates of 77 and 58 cents, which had been in force via the Memphis route, and have admitted that the rates lawfully applicable at the time and over the route the shipments moved were, under all the circumstances and conditions then existing, unreasonable, and that they should not have exceeded the rates in force via Memphis. Subsequently the rates over both routes were increased 10 cents per 100 pounds.

Upon consideration of all the facts and circumstances disclosed by the record, we find that the rates of \$1.07 per 100 pounds on fresh meat and 66 cents per 100 pounds on packing-house products were unreasonable to the extent that they exceeded 77 cents and 58 cents, respectively, and that complainant is entitled to reparation in the sum of \$688.71, with interest, that amount representing the difference between the rates herein found to have been excessive and the rates subsequently established in lieu thereof. An order will be entered accordingly.

No. 1917.

IOWA SOAP COMPANY

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY
ET AL.

Submitted May 10, 1909. Decided June 22, 1909.

Defendants ordered to cease and desist from charging for the transportation of complainant's Pin Yon soap, in less-than-carload quantities, in boxes or in barrels, rates in excess of fourth class in Western Classification territory.

W. E. Blake and Harold J. Wilson for complainant.

V. M. Shelton and Guernsey, Parker & Miller for Chicago, Burlington & Quincy Railroad Company.

E. B. Peirce, Carroll Wright, and A. W. Eberhart for Chicago, Rock Island & Pacific Railway Company.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

Complainant is a corporation engaged at Burlington, Iowa, in the manufacture, sale, and shipment of soap. In this complaint it alleges that the rates exacted by defendants for the interstate transportation of one of its brands of laundry soap, designated as "Pin Yon," are unreasonable.

During the year from August, 1907, to August, 1908, complainant shipped from its factory 5,326,905 pounds of soap, and it says that approximately seven-eighths of its shipments were interstate. During the same period its shipments of Pin Yon soap amounted to 1,320,272 pounds (15,352 boxes), from which it appears that approximately one-fourth of its total shipments during that year were of the brand mentioned. The size of a bar of Pin Yon soap, which is rectangular in shape, is 2½ inches wide, 4½ inches long, and 1½ inches thick, and it weighs 11 ounces. The words "Pin Yon" as applied to this soap is simply a registered trade name which complainant and its predecessor have used since 1885. On each bar of this soap, while it is still soft and before it is wrapped, is placed a safety pin,

and it is by reason of such use of the pin in connection with the soap that this controversy has arisen.

Soap in less-than-carload quantities is carried by defendants at fourth class rates, in accordance with the provisions of the Western Classification. Safety pins, under the same classification, are subject to first class rates. Rule 11 of the Western Classification is as follows:

Where not otherwise specified in the classification, any package containing articles of more than one class will be charged at the less-than-carload tariff rate for the highest classed article contained therein.

Rule 111 of Western Trunk Line circular, I. C. C. No. A-18, is as follows:

Articles in packages containing premiums in cases, C. L. and L. C. L., will be charged at 110 per cent of the rates provided for the same articles packed in the same manner without premiums; provided that in carloads containing packages, both with and without premiums, only such portion of the carload as contains premiums will be charged 110 per cent, the remainder of the carload to take the carload rate for the article. *Shippers will be required to state on shipping tickets whether or not packages contain premiums.*

Complainant contends that the safety pin impressed in its soap is not a premium, and has refused to make notation to that effect on its shipping orders. Therefore in a number of instances first class rates have been assessed on its shipments of soap, in accordance with Rule 11 of Western Classification. In other instances 110 per cent of fourth class rates have been applied, in accordance with Rule 111 of Western Trunk Line circular. Complainant insists that any charge in excess of fourth class rates is unreasonable.

The safety pins impressed in complainant's soap weigh 5 ounces to the hundred and cost 9 cents per 100. The soap is of a cheap laundry quality and is sold at retail at 6 bars for 25 cents. The record appears to prove that the safety pin is not a premium; that is to say, a purchaser does not buy this brand of soap in order to secure the cheap and comparatively useless safety pin which is attached thereto. On the other hand, the preponderance of testimony is to the effect that soap of this variety is sold in large part to illiterate persons who are unable to read the printed matter on the wrappers, and that the use of the pin furnishes a peculiarly effective means by which persons of that class may identify complainant's soap and recall its name when making purchases. It does not seem probable that the utility of the wire pin impressed in this soap is such as to induce the purchase of the soap in order to secure the pin. The evidence tends to show that this is not a marketable safety pin and would not be sold as such in stores. In our opinion it is in no true sense a premium, but rather a trade-mark or representation, quite similar in purpose to the familiar tags usually attached to plug tobacco. It may be noted in

passing that, although tobacco tags are more valuable than complainant's safety pin, a higher rate is not assessed upon shipments of plug tobacco by reason of the tag attached to each plug.

Defendants urge that Rule 11 of the Western Classification and Rule 111 of Western Trunk Line circular were adopted to eliminate and prevent very substantial and grave abuses and discriminations which had arisen through attempts to ship, as part of a package carrying a low rate, articles of higher classes. To permit such a practice undoubtedly discriminated against those who shipped only articles of the higher class. Defendants now say that—

It has seemed impracticable to admit complainant's right to have its safety pins carried as soap without totally destroying Rule 11, and introducing all the ills that rule was formed to prevent.

We can not escape the belief that any such dire result exists mainly in the imagination of defendants. While the rule itself is entirely commendable, each class of shipments is entitled to carriage at reasonable rates, and any rule which is so inflexible as to deny substantial justice to a particular article of traffic should be reformed. Moreover, there is no reason why complainant should be punished for the sins of others.

Soap of the quality here in question is a highly competitive article, which is sold upon a small margin of profit. Complainant's witnesses have testified, and their statement is not disputed, that the enforcement of rates higher than fourth class upon this brand of soap will drive it from the market. We find that exaction by defendants of rates in excess of fourth class upon complainant's Pin Yon soap is unreasonable, and an order will be entered requiring defendants to cease and desist therefrom.

We are not certain, holding as we do that the safety pin is no more than a trade-mark or representation, that any change in defendants' rules is necessary. We have found that the safety pin is not a premium, and therefore is not subject to the higher rates provided by Rule 111. Perhaps it might, under a technical construction of the rule, be subject to the higher rates provided by Rule 11. But if so, it would seem equally reasonable to charge second class rates upon this soap because it is contained in paper wrappers, or third, on account of the nails used in the box. We believe that sensibly construed the present rules do not prohibit the shipment of complainant's Pin Yon soap at the fourth class rates; but if defendants are otherwise advised they may submit to the Commission a modification of the rule which will obviate that difficulty. At present our order will provide merely for discontinuance of the exaction by defendants of rates in excess of fourth class.

No. 2139.

SMITH MANUFACTURING COMPANY

v.

CHICAGO, MILWAUKEE & GARY RAILWAY COMPANY
ET AL.

Submitted May 25, 1909. Decided June 22, 1909.

Defendants' through rates for the transportation of manure spreaders in carloads from De Kalb, Ill., to Olivia and Hutchinson, Minn., found unreasonable to the extent that they exceeded the sum of the locals. Reparation awarded.

M. G. Stephen for complainant.

William Ellis for Chicago, Milwaukee & St. Paul Railway Company.

C Wood for Chicago, Milwaukee & Gary Railway Company.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

February 18, 1907, complainant shipped over defendants' lines a carload of manure spreaders from De Kalb, Ill., to Olivia, Minn., on which a through rate of 33 cents per 100 pounds was collected on a weight of 27,000 pounds. At the same time there was in effect over the same route a combination of local rates of 30.3 cents.

October 26, 1907, complainant shipped over defendants' lines a carload of manure spreaders weighing 28,900 pounds, from and to the same points, on which the same charge of 33 cents for the through haul was exacted.

July 27, 1907, complainant shipped over defendants' lines a carload of manure spreaders from De Kalb to Hutchinson, Minn., on which the published through rate of 29 cents per 100 pounds was charged on a weight of 28,600 pounds. At the same time there was in effect over the same route a combination of local rates of 27.2 cents per 100 pounds.

It is alleged that the through rates charged were unreasonable to the extent that they exceeded the combinations of locals in effect at the same time over the same routes. An order establishing a just
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and reasonable through rate between the points involved is requested. Complainant also asks an order for reparation in the sum of \$19.94.

No evidence was submitted by defendants to justify the higher through charges. Under the circumstances, and in accordance with the repeated rulings and decisions of the Commission, the through rate of 33 cents per 100 pounds on manure spreaders in carloads from De Kalb, Ill., to Olivia, Minn., is *prima facie* unreasonable. We have nothing before us to the contrary. We therefore find that a reasonable rate to apply to such shipments should not exceed 30.3 cents per 100 pounds. For the same reason we find that a reasonable rate to apply on manure spreaders in carloads by defendants from De Kalb, Ill., to Hutchinson, Minn., should not exceed 27.2 cents per 100 pounds. We further find that complainant is entitled to an order for reparation in the sum of \$19.94. The carriers will be required to establish and maintain for a period of not less than two years from and after the effective date of the order herein, between the points named, rates not to exceed those above found to be reasonable. An order will be entered accordingly.

16 I. C. C. Rep.

No. 1581.
HUMBIRD LUMBER COMPANY, LIMITED,
v.
NORTHERN PACIFIC RAILWAY COMPANY ET AL.

Submitted December 9, 1908. Decided June 21, 1909.

Reparation awarded for unreasonable charges collected on shipments of cedar posts and lumber from points in Idaho to points in Wyoming.

Charles L. Heitman for complainant.

Arthur B. Lee for defendants.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

On June 11 and July 2, 1907, complainant shipped 2 carloads of cedar posts from Humbird, Idaho, to Basin, Wyo., weighing 76,600 pounds, on which it paid the published through joint rate of 56 cents per 100 pounds, a total of \$428.96. On June 22, 1907, it shipped a carload of lumber from Kootenay Spur, Idaho, to Basin, Wyo., weighing 38,200 pounds, on which it paid the same rate, or \$213.92. At this time there was in effect over the line of defendants a local rate from the shipping points named to Billings of 28½ cents and 18 cents from Billings to Basin, making a combination of 46½ cents. On April 26, 1907, complainant shipped a carload of cedar posts from Sagle, Idaho, to Garland, Wyo., weighing 31,000 pounds, at the published through joint rate of 53 cents, or a total of \$164.30. At this time, there was in effect a rate of 3 cents from Sagle, Idaho, to Sand Point, Idaho; Sand Point to Billings, 28½ cents; and Billings to Garland, 16 cents, making a combination rate of 47½ cents.

Since these shipments moved, the carriers have published and made effective, as the result of an order issued by the Commission in *Potlatch Lumber Co. v. N. P. Ry. Co.*, 14 I. C. C. Rep. 41, a rate of 50 cents per 100 pounds on lumber (other than cedar) from Kootenay to Basin; 54 cents on cedar posts, Humbird to Basin, and 52 cents, Sagle to Garland.

We find that the rates assessed on these shipments were unjust and unreasonable to the extent that they exceed the rates which have since been established in compliance with the Commission's order. Reparation will be ordered in the amount of \$41.34, with interest.

No. 1986.

SUNDERLAND BROTHERS COMPANY

v.

PERE MARQUETTE RAILROAD COMPANY ET AL.

Submitted March 8, 1909. Decided June 21, 1909.

Rates assessed on shipments of soft coal from Wellston, Ohio, to Manitowoc, Wis., for points beyond, found unreasonable. Reparation awarded.

C. E. Child for complainant.

B. T. White for Chicago & North Western Railway Company.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

Complainant shipped 14 carloads of soft coal, aggregating 870,000 pounds in weight, via the lines of defendants the Pere Marquette Railroad Company and the Cincinnati, Hamilton & Dayton Railway Company, from Wellston, Ohio, to Manitowoc, Wis., destined to points beyond, charges being assessed at the rate of \$1.85 and \$1.80 per ton, or in the total amount of \$798.62. No complaint is made as to the charges of defendant the Chicago & North Western Railway Company from Manitowoc to ultimate destinations, and the complaint as to that carrier will therefore be dismissed. The complainant alleges that the rates assessed for the movement from Wellston to Manitowoc are unjust and unreasonable to the extent that they exceed a rate of \$1.65 per ton in effect prior to, and reestablished soon after, the shipments in question.

The rate from Wellston to ultimate destination is made of the through proportional rate to Manitowoc plus the charges of the Chicago & North Western beyond. The published tariffs of the defendants for many years prior to December 1, 1907, named a rate of \$1.65 per ton on soft coal from Wellston to Manitowoc, which was the proportional rate between these points on business destined for beyond. On the date named this rate was advanced (Sup. No. 116 to I. C. C. No. 22, Ohio Coal Traffic Association) to \$1.80 per ton.

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This rate remained in effect until January 22, 1908, when it was reduced to \$1.65 (Sup. 129 to I. C. C. No. 22). The traffic in question moved during the period of the advanced rate. At the hearing there was no appearance in behalf of the Pere Marquette or the Cincinnati, Hamilton & Dayton.

All the shipments moved from Wellston via the Pere Marquette and the Cincinnati, Hamilton & Dayton to Manitowoc. At the time the rate was raised from \$1.65 to \$1.80, Wellston to Manitowoc, the rate from Wellston to Milwaukee remained at \$1.65. The shipments in question could have moved via Milwaukee at the cheaper rate, but the complainant testified that a supply of coal had been purchased and ordered sent via Manitowoc when the \$1.65 rate was in effect via that route and the billing could not readily be changed.

On account of the nonappearance of the defendants in this case, we have nothing before us but the evidence of the complainant with respect to the shipments. It is the contention of the complainant that because the rate had been maintained at \$1.65 for a long period and was raised to \$1.80 for a short period and then reestablished at \$1.65 the advance rate must be held to be unjust and unreasonable.

Where carriers voluntarily maintain a rate between certain points for a long period of time the presumption is that such rate is reasonable, and where a long-established rate is raised for a short period and then voluntarily reduced to the former point the presumption is that the advanced rate is unreasonable, but this presumption may be overcome by proof to the contrary.

In this case, in the absence of any showing by the defendants tending to justify the advance, it will be presumed to be unreasonable. Therefore we find that the rates charged and collected by the defendants for the shipments in question were unjust and unreasonable to the extent that they exceeded \$1.65 per ton, and that complainant is entitled to \$80.87 reparation, with interest. Defendants will be required to maintain for a period of not less than two years a proportional rate not to exceed \$1.65 per ton on soft coal in carloads from Wellston, Ohio, to Manitowoc, Wis., when destined to points beyond. An order will be entered accordingly.

Nos. 1755, 1780, and 1783.
GRAND JUNCTION MINING & FUEL COMPANY ET AL.
v.
COLORADO MIDLAND RAILWAY COMPANY ET AL.

Submitted March 22, 1909. Decided June 21, 1909.

Complainants seek lower rates and joint through rates on coal from their mines in western Colorado to various points in western states, and comparison is made with rates per ton mile from other coal-producing points, the particular point selected being upon the Union Pacific system in Wyoming; *Held*, That operating conditions and differences in location do not warrant the Commission's ordering the joint through rates prayed for or further reducing the rates complained of and which have been materially reduced by the carriers since these complaints were filed.

C. W. Durbin for complainant.

E. N. Clark for Denver & Rio Grande Railroad Company.

W. R. Keeley for San Pedro, Los Angeles & Salt Lake Railroad Company and Las Vegas & Tonopah Railroad Company.

Henry T. Rogers for Colorado Midland Railway Company.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

These cases were heard together and will be disposed of in one report.

Complainants are engaged in coal-mining operations in the western part of Colorado, the mine of the Grand Junction Mining & Fuel Company being located at Cameo, on the joint track of the Denver & Rio Grande and Colorado Midland railways, and that of the South Canon Coal Company at South Canon, a local point on the Colorado Midland Railway.

Complainants allege that the rates exacted for the transportation of coal from their mines to points on defendants' lines in Utah, Nevada, California, Oregon, Washington, Idaho, and Montana are unreasonable and unjust as compared with rates from other producing fields in Wyoming and Utah, also served by defendants, and pray for the establishment of reasonable through routes and joint rates to such destinations.

Complainants have filed elaborate statements showing in detail the specific rates applying from Cameo and South Canon to numerous destinations; also the approximate distances and rates and revenue per ton per mile derived by the carriers from the rates in effect at the time of the filing of these complaints and from the reduced rates which have been established since the hearing; also the present rates from Rock Springs, Wyo., and other points to the same destinations and revenue per ton per mile accruing thereunder. We have examined and considered these statements with some care, but do not deem it necessary to set them out here in full.

It may be stated, in a general way, that subsequent to the hearing in these cases reductions were made in the rates on coal from Cameo and South Canon to practically all of the points of destination involved. In a general way, these reductions to Utah common points amounted to \$1.25 per ton on lump and \$1.50 on slack. From South Canon, where the rates were formerly \$4.75 per ton on all grades, they are now \$3.75 and \$3.50 per ton on nut and slack, respectively.

To points on the Denver & Rio Grande, between Provo and Ogden (Utah common points), the rate from Rock Springs is \$1.75 per ton, which is the same as from Castle Gate, Utah. Salt Lake City is about midway between Ogden and Provo, and is 111 miles from Castle Gate and Scofield, at both of which points there is a large production of high-grade coal. Complainants ask for a rate from Cameo and South Canon 50 cents higher than from Castle Gate, or \$2.25 per ton. The distance from Cameo is 198 miles and from South Canon 266 miles greater than from Castle Gate or Scofield.

The same rate applies from Rock Springs to Goldfield, Nev., as from Castle Gate and the other mines on the Denver & Rio Grande in Utah. Extending this rate from Cameo and South Canon would involve blanketing a territory of origin 375 miles in extent, in which there would be, between Cameo and Sunnyside, an arid belt more than 170 miles wide which produces no coal.

On coal traffic from Cameo and South Canon, originated by the Colorado Midland, the Denver & Rio Grande receives, under the reduced rates now in effect, \$2.90 and \$2.44 per ton, respectively, for its haul of 329 miles from Grand Junction to Ogden. Where the Denver & Rio Grande originates the traffic, that company receives its local rate of \$3.50 per ton to Ogden.

The rates from complainant's mines under the new tariffs are made up in part of the proportionals ordinarily allowed western lines on coal traffic originated by their eastern connections.

Out of a rate of \$10.05 formerly in effect from Cameo and South Canon to McGills and Ely, Nev., published in Colorado Midland tariff, I. C. C. No. 246, the Nevada Northern received \$3 per ton on

slack and \$4 per ton on lump, the latter rate being its local from Cobre to McGills and Ely. Under the new tariff, effective February 8, 1909, this company accepts as its proportion of the through rate \$2 per ton on lump from Cobre to Curry, Cherry Creek, and McGills, and \$1.25 per ton on other grades; to Ely, \$2.25 per ton on lump, \$1.50 on kitchen nut and mine run, and \$1.25 on slack; to Copper Flat, Timberly, Veteran, and Star Pointer, on lump \$2.50 and on other grades of soft coal \$1.50 per ton. These proportions are the same as the divisions received by this company on coal from Utah and Wyoming mines. Cameo and South Canon are some 300 miles farther from points on this road than is Rock Springs, Wyo.

Ninety-one per cent of the entire traffic handled by the Nevada Northern over its main line is inbound, of which 80 per cent is consigned to the smelters and mines owning the railroads. Ninety-six per cent of the eastbound equipment moving over this road is handled empty.

On all coal from Rock Springs via Granger to points on the Oregon Short Line north and west the Union Pacific receives 50 cents per ton. Via Ogden to territory south of McCammon, including the Malad and Cache Valley branches, the through rate divides on a straight mileage pro rate with a minimum of 50 cents per ton to the Oregon Short Line. In the majority of instances the Union Pacific receives more than 50 cents per ton to this territory when coal moves via Ogden. To the territory south of McCammon a blanket rate applies from Ogden of 50 cents per ton more on Cameo and South Canon coal than on coal from Rock Springs. The differential from Cameo and South Canon over the Rock Springs rate is due to the fact that the Denver & Rio Grande's proportion is greater on coal originating at those points, and this excess is claimed to be justified by the greater difficulties of operation and the much greater distance from Cameo and South Canon.

The operating difficulties encountered by the railroads in hauling coal from complainants' mines to this western country are such as to greatly increase the cost of transportation. The Cameo mine is located 17 miles and the South Canon mine 77 miles east of Grand Junction. From Grand Junction to Helper, a distance of 176 miles, the maximum grade is 1.1 per cent, with a maximum curvature of from 6 to 7 degrees. The so-called 100 and 200 class engines are capable of handling 750 tons; 500-class engines, 800 tons; and 220-class engines, 1,000 tons. From Helper to Soldier Summit, a distance of 25 miles, the maximum grade is 2.4 per cent, with maximum curvature of 9 degrees. Engines of the 100 class will handle 350, of the 300 class 500, and of the 220 and 440 classes 550 tons. At Helper it is necessary to break up the train or put on extra engines. From

Soldier Summit to Tucker is down grade, 4 per cent, with curves as high as 11 degrees. Safety in operation necessitates comparatively light tonnage in trains descending this grade. From Tucker to Thistle, a distance of 18 miles, is down a 2.3 per cent grade, with a maximum curvature of 10 degrees. At Thistle trains are made up consisting of 35 loads, which can be safely handled into Provo. From Provo to Bingham Junction, between 1,075 and 1,250 tons can be handled, according to the class of engine used. From Bingham Junction to Ogden grades are not difficult.

The average revenue-producing freight per train on the Denver & Rio Grande from Grand Junction to Helper for the year ended June 30, 1908, was 301 tons; loads per train, 19.38; tons of freight per loaded car, 20.44; and from Helper to Ogden revenue-tonnage per train, 373 tons; loaded cars per train, 18.8; and tons of freight per loaded car, 27.21.

From Rock Springs to Evanston, 115 miles, the Union Pacific Railroad hauls with one engine 1,500 to 1,750 tons, and from Evanston to Ogden, 75 miles, approximately 2,200 tons.

Traffic from South Canon or Cameo originated by the Colorado Midland and consigned to Southern Pacific points is handled by three lines, viz, the Colorado Midland, the Denver & Rio Grande, and the Southern Pacific; and from the same points of origin to Goldfield, Nev., traffic moves over five separate lines of railroad, viz, the Colorado Midland, the Denver & Rio Grande, the San Pedro, Los Angeles & Salt Lake, the Las Vegas & Tonopah, and the Tonopah & Goldfield. The through rates must be divided between these participating carriers.

To the Ogden gateway, through which coal from Cameo or South Canon must pass to reach any point in any of the states named except Utah and points reached via the San Pedro, Los Angeles & Salt Lake Railroad, it is 191 miles from Rock Springs and 406 miles from South Canon.

The general freight agents of the Denver & Rio Grande and Colorado Midland roads testified that their companies would not have sufficient equipment to take care of the coal traffic originating on their lines if through routes and joint rates are established and their cars are thereby forced off their rails, and that, whether furnished by them or by their western connections, it would be necessary to haul them in one direction without loading, since the preponderance of empty car movement is eastbound.

The Eureka & Palisade Railway is a narrow-gauge road and does not pay the cost of operation. It was constructed originally to develop mining properties which have been practically shut down for years. This line is 88 miles in length, with but 8½ miles of level

roadbed. The maximum grade is $4\frac{1}{2}$ per cent and the maximum curvature $22\frac{1}{2}$ degrees.

The Las Vegas & Tonopah road runs through a desert country and is also operated at a loss.

The San Pedro, Los Angeles & Salt Lake Railroad has 210 miles of track in the state of Nevada, and for the year 1906 and part of the year 1907 the gross earnings of this line on intrastate business in Nevada amounted to \$3,100. There is practically no traffic to provide loading for coal cars returning east, and 80 per cent of this equipment is handled empty.

The Nevada Northern road operates from Cobre Junction, on the Southern Pacific, to Ely, Nev., a distance of 140 miles. The main line of this road passes through Steptoe Valley, which is practically a desert country without agricultural interests of any sort. This road was originally constructed to serve the large copper mines located 13 miles northwest of Ely.

Coal produced at complainants' mines is good for storage purposes, and it is claimed that a freight rate which would permit a free movement from their mines would prevent shortages which occur in the west almost every winter. Under the rates in effect at the time these complaints were filed complainants sold practically no coal in this western country, except in times of coal famine, and they claim that even under the reduced rates subsequently established it will be impossible to do so in competition with Rock Springs. Sixty per cent of the coal sold from complainants' mines is marketed in Colorado and the balance goes to Kansas and Nebraska.

The Cameo and South Canon mines have a capacity of 500 to 600 tons per day each, but they have been unable to dispose of this tonnage.

The Denver & Rio Grande Railroad Company owns the stock of the Utah Fuel Company, which operates mines in western Colorado and Utah. The Union Pacific Railroad Company owns coal mines in Wyoming. Because of their interest in these properties it is suggested that these roads are not favorable to an adjustment of freight rates which will enable the Cameo and South Canon mines to compete in this western country.

The Commission can not indulge in speculation as to the motives which actuate carriers in fixing an adjustment of freight rates as between various points of origin. We can only determine upon the facts before us and the actual conditions of which we may have knowledge whether or not the rates in question are unreasonable or unjustly discriminatory.

It should be borne in mind that coal from Cameo and South Canon moves over the same rails, and the only rails over which it can move,

and through a practically desert country from points of origin to Provo, Utah, distances of 264 and 324 miles, respectively, before it reaches a junction at which it can be delivered to a line which reaches Nevada or California, that junction being with the San Pedro, Los Angeles & Salt Lake Railroad; that in that haul it passes through several extensive coal-producing fields much nearer to the markets sought, and that it must move to Ogden, 85 miles farther, to a junction of lines reaching the other states named. It should also be understood that the Rock Springs mines are local to the Union Pacific lines; that coal from there to points in Idaho, Montana, or the Pacific northwest does not move via Ogden, but via the shorter and direct line via Granger and Pocatello; that Rock Springs is more advantageously located with respect to the territory which complainants desire to reach than either Cameo or South Canon, and certainly is as favorably located with respect to the Utah markets; and that rates from Rock Springs, Cameo, and South Canon to Utah points must be made in competition with rates from mines in Utah much nearer to Utah markets than either Rock Springs, Cameo, or South Canon, and which are directly intermediate in the haul from Cameo or South Canon.

We are not convinced that the rates complained of are unreasonable in and of themselves, considering the comparatively small volume of traffic and the fact that complainants' shipments to the west must be transported by the originating lines and their connections over mountain roads which are extremely expensive to operate and through a sparsely settled and practically unproductive desert country. A mere comparison of revenue per ton per mile derived from this traffic originating at Cameo and South Canon with that derived from similar traffic originating at other points, even when such comparison shows higher per ton per mile rates from complainants' mines, is by no means conclusive as applied in a country where nature has interposed such obstacles as to make the operating conditions so dissimilar.

As has been pointed out, and probably as a result of this complaint, material reductions have been made in the rates from complainants' mines since the complaint was filed, and new relationships of markets have been thereby established. Although we can not measure the exact effect of these reductions at this time, they can hardly fail to be helpful to complainants. The Commission can find no justification in this record for ordering further reductions in these rates or for ordering the joint through rates prayed for, and an order dismissing the complaints will therefore be entered.

No. 1958.
CALIFORNIA COMMERCIAL ASSOCIATION
v.
WELLS FARGO & COMPANY.

Submitted May 10, 1909. Decided June 21, 1909.

Defendant's tariff provides that under certain circumstances two or more packages forwarded by one company, from the same point, on the same day, to one consignee, whether from one or more shippers, must be aggregated as to weights if a lower charge is thereby made. Upon complaint that this rule was not applied to certain shipments to which it should have been applied; *Held*, That the rule should have been applied to those shipments, and that charges collected thereon in excess of what would have been the charges if the rule had been applied were in excess of the lawful tariff charges and should be refunded.

Lester G. Burnett and J. O. Bracken for complainant.

C. W. Stockton, E. S. Pillsbury, and C. L. Brown for defendant.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

On December 26, 1908, complainant, a voluntary association of merchants of California, alleged to be organized for mutual benefit but not for profit, membership not limited, and to be doing business in San Francisco, Cal., filed complaint against defendant, a common carrier subject to the act to regulate commerce, in which reparation in the sum of \$585.01, with interest, is asked on certain shipments of merchandise forwarded on various dates between August 20 and September 9, 1908, both inclusive, from New York to San Francisco via the line of the defendant. It appears that on and between these dates complainant delivered to the defendant at New York certain packages of merchandise of varying weights which were consigned to complainant at San Francisco. Each package had pasted upon it a tag or label, for example, as follows:

CALIFORNIA COMMERCIAL ASSOCIATION

FOR

S. L. LESZYNSKY & Co.

209

San Francisco, Cal.

Weight ———. Shipper's No. ———. Package No. ———.

In some instances the name of the firm immediately under the name of the complainant was erased, or partially so, by being stricken out by pencil.

It is alleged that although many packages bearing the same number were delivered to the defendant on the same day for transportation from and to the complainant, and defendant's tariff I. C. C., O. E. C. No. 1 provided an exception to Rule 7 under (d) as follows:

Between points where one through graduated charge is authorized, and the rate per 100 pounds is \$1.50 or more, the weights of two or more packages of 20 pounds each, or of less than 20 pounds each if estimated at 20 pounds each, when forwarded by one company, from the same point, on the same day, to one consignee, whether from one or more shippers, must be aggregated, if a lower charge is made thereby, * * *

defendant refused to apply aggregated charges on the shipments in controversy, but instead applied package rates for each package, which action is alleged to constitute an unjust discrimination in violation of the provisions of the act.

Complainant sets out in its petition detailed statement of the packages for each and every individual consignee contained in each and every separate lot of merchandise on which it is alleged the defendant refused to assess charges on aggregate weights, giving date of prepaid receipt issued by defendant; name and shipping number of each individual consignee; weight of each separate package and the combined weight of such packages for each and every individual consignee in each and every said separate lot of merchandise; charges assessed by defendant on packages for each consignee in each lot of merchandise; charges which it is alleged defendant should have assessed under its Rule 7 (d); amounts of alleged overcharge as to each consignee and total amount of alleged overcharge.

Defendant, answering, while admitting that complainant is a voluntary association of merchants of San Francisco, denies that it is not organized for profit, that membership is not limited, or that the business done by it as an association is confined to the city and county of San Francisco. It admits that complainant, on the dates mentioned, delivered to it at New York several lots of merchandise, but has no information as to whether or not they were as described in complaint. It is stated that defendant believes that the several packages contained in such lots of merchandise were for different individuals, members of the complainant association, and admits that the packages bore, in addition to the name of the complainant as consignee, certain numbers, which may or may not have represented the shipping numbers of such members. It denies that each package bore the full firm name of an individual member of the complainant association. It admits its refusal to give aggregated weights on the packages in the lots of merchandise offered by complainant upon the dates named, and alleges that at the time of tendering such shipments complainant

was fully aware and advised by defendant of the existence of its Rule 7 (*d*), that aggregation of weights under it could be made only as to packages that were the property of one individual. Defendant admits charging on each separate lot of merchandise as though each package in said lot was for a separate individual consignee, but denies that that constituted unjust discrimination. It alleges that its charges were fixed at the lawfully published rate for the kind of shipments offered to it upon the dates mentioned, and that such rates were just and reasonable. It also alleges that complainant is a forwarding agent, which has sought and is seeking to compel it to carry aggregated or bulked shipments upon the same terms as it carries individual shipments for persons and firms.

It appears that on August 19, 1908, W. J. Armstrong, president of the New York Dry Goods Shipping Company (incorporated), had a conversation with the general agent of defendant at New York, and that Mr. Armstrong stated he was the New York representative of complainant, both in respect to ownership of the goods and the rate that would be charged for transportation; that Mr. Armstrong explained that it was his purpose to gather together shipments from various consignors in New York City which belonged to different consignees at San Francisco, to mark them as for the complainant, and that the goods would bear numbers which would designate the ultimate consignees; that upon arrival at destination the packages would be distributed to the different consignees in accordance with the numbers shown. It appears that arrangements had been made with J. & W. Seligman, of New York, to prepay charges on complainant's shipments. Request was made upon Mr. Armstrong to furnish a letter stating that each different number represented one and only one consignee, and he was told that if such letter was furnished the rule in regard to aggregation would be applied. Mr. Armstrong stated that he could not give such a letter until he had received instructions from San Francisco; that he had not then received such instructions, and that the shipments would be made regardless of the charges. After the shipments arrived at San Francisco, Mr. J. O. Bracken called to the attention of defendant's superintendent the fact that charges had been assessed on each individual package—that is, that Rule 7 (*d*) had not been applied. He was informed that it was the understanding of the superintendent that before aggregation would be applied it would be necessary that a list be furnished of the numbers assigned to ultimate consignees. No request for such list was made, but it was voluntarily furnished the day following this conversation. This list was sent to the New York office of the defendant, and the San Francisco representative of the defendant was then informed that in addition to the list a statement to the effect that each number represented one and only one consignee

would be necessary. Thereupon the superintendent telephoned that information to Mr. Bracken, who stated that he would immediately telegraph his New York representative to give such statement and that he had previously instructed him to give any reasonable information or meet any reasonable requirements of the defendant.

As soon as the list with the certification that each number represented one and only one consignee was furnished, the defendant commenced to apply and has since applied its Rule 7 (*d*) to shipments received from the complainant through its New York representative, the New York Dry Goods Shipping Company, destined to complainant with the ultimate consignees indicated by shipping numbers. The only question in the case, therefore, is whether or not reparation shall be made to the complainant on the shipments moved between the dates named, during which time the defendant did not possess list and certificate as above indicated.

At the hearing in San Francisco complainant produced defendant's prepaid receipts on shipments from August 20 to September 9, 1908, both inclusive, showing the number of the shipment, the individual number of each package and the consignee's number, the weight, to whom addressed, the destination, and the amount prepaid.

Defendant urgently emphasizes as a basis for dismissal of the case the fact that the evidence submitted does not show that the shipments in controversy were actually the property of or intended for the consignees alleged to be designated by shipping numbers. Unquestionably the affirmative and mandatory obligation of the law imposes upon the carrier subject to its provisions the utmost diligence to apprise itself that the rates are lawfully applied. It must safeguard against so carelessly shutting its eyes to what it was put upon inquiry as to constitute criminal disregard of the law's requirement anent observance of tariff rates and rules.

It should be carefully held in mind that the question involved in this case is which of two tariff rules should have been applied—that is, whether defendant was correct in assessing package rate or whether Rule 7 (*d*) should have been used. The larger question of whether or not "special rates on merchandise in large lots," etc., passed upon by the Commission in *California Commercial Association v. Wells Fargo & Company*, 14 I. C. C. Rep., 422, is not herein involved. It was there held that the law does not justify classification of shippers with regard to their interest in property shipped. The order in that case was withdrawn and the case is to be argued.

It should be noted that defendant's Rule 7 (*d*) does not require that the several packages aggregated thereunder shall be the property of one person or firm. It provides for the aggregation of packages "forwarded by one company, from the same point, on the same

day, to one consignee." The arrangement out of which this controversy grew was a new one. Complainant's plan and intentions were explained to defendant, and defendant expressed itself as willing to apply its Rule 7 (*d*) if furnished with statement that a certain number represented a certain consignee. Necessarily some little time was consumed in correspondence between New York and San Francisco, but it is clear that complainant neither demurred against nor delayed in furnishing what defendant requested. And it is equally clear that the statement was immediately accepted by defendant as warrant for applying its Rule 7 (*d*) to complainant's shipments.

Goods are shipped from New York to San Francisco by express only when desired dispatch warrants the expense so incurred—that is, time is the essence of the transaction. It was therefore necessary that the shipments here in question should move. They could not well wait for final adjustment of the questions raised by defendant's demand for statement from complainant. As to those shipments, however, there is now presented just such a statement as was accepted by defendant as warrant for applying its Rule 7 (*d*) to shipments moving a few days later under exactly the same conditions which surrounded the shipments here in issue. In other words, the statement was furnished as to these shipments after they had moved and as to other shipments before they moved. Apparently the statement was desired by defendant as an earnest of desire and intent on its part to apply its rules in the proper spirit and in a lawful manner. The statement was accepted, and no doubt given in perfect good faith. If by any chance it should develop that defendant had been misled and that the statement was not in fact true, complainant would have placed itself in a position which would invite the penalties provided in section 10 of the act.

Defendant's Rule 7 (*d*) does not provide for such statement as was requested from complainant as a prerequisite to the application of the rule. Defendant has as much knowledge as to the propriety of the application of the rule to the shipments here considered as it has with regard to the shipments to which it has applied the rule. We see no room for criticism of the application of the rule under the circumstances in which it is applied to this complainant's shipments. Indeed, the only question that could be raised with relation thereto apparently would be the marking of the packages with a number which represents a firm or person instead of that firm or person's full name and address.

It is to be remembered that the aggregation of packages under Rule 7 (*d*) is not a favor which the rule permits, but it is a right which the rule confers upon all shippers and an obligation which the rule

lays upon the defendant. The language of the rule is: "Must be aggregated, if a lower charge is made thereby."

Three points of law are raised by the defendant:

First. Whether the complainant has any such status in law or any such interest in fact as to enable it to maintain an action or proceeding for damages. •

Second. Whether Armstrong was the agent of the complainant for the purposes of shipment and whether notice to him is notice to his principal.

Third. Whether the complainant having refused, although notified of the difference in rates at the time of shipment, to disclose such facts in relation to its shipments so as to bring them within the defendant's rule, and having forwarded said shipments at the lawful rate under the conditions disclosed to the carrier, may now claim the application of a different rate and obtain reparation thereunder.

First. The Commission has held in numerous decisions that an association similar to complainant is a proper party to maintain a petition for relief from the exaction of an illegal or unreasonable charge, or, in brief, for any violation of the law's requirements. The exact question raised by defendant with respect to the right of complainant to maintain an action for damages, the beneficiaries of which will be its members, was fully and exhaustively considered by the Commission in *Cattle Raisers' Asso. v. C., B. & Q. R. R. Co.*, 10 I. C. C., Rep., 83, wherein it was held (following the practice of the Commission theretofore) that on a petition alleging an illegal charge "the association should be permitted to show that its members have sustained this damage, and that when this has been done it will be our duty to make an order upon the carriers for the repayment of these exactions."

Second. It is our view that Armstrong was the agent of the complainant.

Third. Possibly a discussion of this point is supererogatory in view of previously expressed determination as to the application of defendant's Rule 7 (*d*), but, with the probable danger of repetition, it may be said that the rule is not permissive merely, expressing as it does a positive obligation which the defendant voluntarily imposed upon itself when shipments coming within the scope of the rule are tendered it for transportation. Armstrong informed the defendant's agent of complainant's purpose, and at that time said agent set forth what he considered to be necessary for the application of the rule's provision. Necessarily, considering the distance New York to San Francisco, some time elapsed before that condition could be met, but it does not appear that the complainant was in any respect dilatory, that it demurred to defendant's requirements, or that any

obstacle was raised to the defendant's securing the information requested as promptly as circumstances and conditions permitted. As soon as the condition imposed by defendant was met, and it should be remembered that the condition was something outside of the rule's requirements, Rule 7 (*d*) was and since has been applied. The exact circumstances and conditions under which the defendant is now applying the rule have been shown to have existed as to the shipments in controversy.

On the record in the case we are of the opinion that the complainant has shown that the shipments made during the period from August 20 to September 9, both inclusive, were such as should have had applied to them the provisions of Rule 7 (*d*); that complainant had not alone the privilege but the right to have that rule applied and that its members have been overcharged to the extent that the charges imposed by the defendant at package rates exceeded the charges which would have been exacted had its Rule 7 (*d*) been applied. While the placing of a firm name on the shipping tag might have simplified the determination of whether or not the packages were intended for one consignee, the number apparently accomplished the same result, and in the absence of any showing of bad faith on part of complainant we feel that Rule 7(*d*) should have been applied.

Being of the opinion that the case, narrowed to its fundamental basis, discloses simple overcharges above the lawful tariff rate, the defendant, on receipt of satisfactory, detailed statement from the complainant of the amounts in which its members have been overcharged, will pay to such members the difference between the charges which were prepaid on the shipments in controversy between the 20th of August and the 9th of September, both inclusive, and the amounts which would have been charged and collected under the provisions of defendants' Rule 7 (*d*).

In the circumstances no order will enter at this time, but the case will be held open until such time as the question of reparation has been settled.

No. 1329.

PACIFIC COAST LUMBER MANUFACTURERS' ASSOCIATION
ET AL.

v.

NORTHERN PACIFIC RAILWAY COMPANY ET AL.

No. 1348.

POTLATCH LUMBER COMPANY ET AL.

v.

NORTHERN PACIFIC RAILWAY COMPANY ET AL.

Decided June 22, 1909.

Complainants' petitions for rehearings, and for vacation and modification of the prior orders of the Commission in these cases, denied.

H. M. Stephens; Wimbish, Watkins & Ellis; and Austin E. Griffiths
for complainants.

REPORT OF THE COMMISSION UPON PETITIONS FOR VACATION AND
MODIFICATION OF COMMISSION'S ORDERS AND FOR REHEARINGS.

CLARK, *Commissioner*:

These cases were considered by the Commission and were decided contemporaneously and with especial reference to and consideration of their relationship to each other as well as to cases Nos. 1327, *Oregon & Washington Lumber Manufacturers' Asso. v. N. P. Ry. Co.*, and 1335, *Southwest Washington Lumber Manufacturers' Asso. v. N. P. Ry. Co.*, 14 I. C. C. Rep., 1, 23, and 41.

The complaints in cases Nos. 1327, 1329, and 1335 attacked certain general increases that had been made in the rates on lumber from the North Pacific coast territory to various destinations east thereof. Condemnation of the increased rates and reestablishment of rates formerly in effect were the essence and prime purpose of these proceedings.

In case No. 1348 the essential and main purpose of the complaint was to secure the establishment of new and greater differentials from certain intermediate territory in the neighborhood of Spokane, Wash.,

under the rates to the same destinations from lumber-producing territories farther to the west.

In cases Nos. 1327, 1329, and 1335 the Commission found that the increased rates complained of were in part unreasonable and in part reasonable and that reparation should be awarded to shippers on the basis of such findings.

Subsequently, in order to permit the carrying out of a harmonious and consistent adjustment of rates, supplemental orders were issued authorizing certain newly established or changed differential rates on cedar lumber, shingles, and long timbers requiring two or more cars higher than the rates on fir and spruce lumber.

In case No. 1348 the Commission prescribed new grouping of intermediate points of origin, new boundary lines for such grouping, and new differential rates applying therefrom lower than from the producing sections or groups farther west. This had the effect of broadening the market for the intermediate group in near-by states and of giving it advantages therein not theretofore possessed as compared with the lumber-producing territories farther west.

In case No. 1348 the following was added to the prayer for the establishment of the differential rates referred to:

Such other and further orders as may by this Commission be deemed necessary or proper in the premises.

No specific prayer for reparation was included, and the Commission concluded and found that reparation should not be awarded because of the new and changed differentials which had been established in that case.

Petition is filed by complainants in case No. 1329 for vacation of the Commission's supplemental orders authorizing the establishment of new or increased differentials on cedar lumber, shingles, and long timbers higher than the rates on fir and spruce lumber and for review of the findings and orders which permitted higher rates on shingles than on fir lumber. The Commission has considered brief and heard argument on this petition.

In condemning in part the general advance in rates which had been complained of the Commission sought to equitably adjust inequities and unjust discriminations which had theretofore existed and which were intensified by the increases in rates which the carriers had established. It was the purpose of the Commission, and of the carriers in carrying out the orders of the Commission, to establish in general a consistent and harmonious adjustment of rates from the different portions of this great lumber-producing territory to the extensive markets for their products. Shingles have for years, with but few exceptions, taken higher rates than fir and spruce lumber. The shingles of this territory meet with but little active competition;

and the same is in a less degree true of the long timbers and in a still less degree of cedar lumber. The fir and spruce lumber comes in keen and direct competition with ordinary lumber of other kinds and from other points of production. The Commission entertains no doubt of the soundness of the principle and the finding that from this territory cedar lumber, shingles, and long timber requiring two or more cars may reasonably take higher rates than fir and spruce lumber.

Petitions have been filed by complainants in case No. 1348 for a modification of the Commission's order with regard to reparation.

As before stated, the orders in cases Nos. 1327, 1329, and 1335 condemned unreasonable advances in rates and authorized reparation on shipments upon which such condemned advanced rates had been charged. In case No. 1348, however, the changed relationship was with reference to rates which had long existed prior to the advances complained of, and the Commission therefore did not think and does not now think that reparation should have been awarded on account of such changed differentials.

Complaint is also made in case No. 1329 that in applying the increase of 5 cents per 100 pounds authorized by the Commission to points east of a certain line defined by the Commission, the carriers did not act upon the suggestion contained in the report of the Commission that the increase should be graded up between the Missouri and the Mississippi rivers or between the Minnesota-Dakota state line and St. Paul. That requirement, however, was not contained in the Commission's orders, and, while it would seem that in some instances the suggestion might reasonably have been given more weight and effect, it is apparent that it could not be literally complied with without serious interference with the long-established relationships in rates as between competing points of production, competing carriers, and competing markets in the territory of distribution and consumption.

Complaint is made in connection with case No. 1348 that the carriers did not consistently grade up the differentials authorized by the Commission. As before stated, the purpose of the Commission in establishing these rates was to establish a more harmonious relationship than had ever before existed. In such an extensive adjustment some individual instances will be found which, taken by themselves, appear inconsistent, but in which an effort to adjust differently is found to bring about more and perhaps worse inconsistencies.

With some informality complaint has been made of differentials on cedar lumber, shingles, and long timbers from a certain producing territory materially higher than what is generally recognized as a

reasonable differential. If that situation has not been changed and complainants desire to contest it they should, in our opinion, do so in a separate proceeding rather than by an effort to reopen these cases.

The findings of the Commission in the several cases above named, and, in the same connection, in case No. 1054, *Pacific Coast Lumber Manufacturers' Asso. v. N. P. Ry. Co.*, 14 I. C. C. Rep., 51, were complied with by defendant carriers and are now in effect. Many reparation claims thereunder have been paid by such defendants, and the Commission has granted authority to other carriers that were not parties to the proceedings, but were parties to the tariffs containing the rates complained of, to also pay reparation in accord with the orders in the cases. Proceedings have been brought in the federal courts to test the reasonableness of the rates so prescribed. The act provides that the Commission may prescribe rates for a future period not exceeding two years. It may be that, as a result of the court proceedings referred to, or upon the expiration of the two years' limitation, some or all of the features of this adjustment may again be put in issue.

Upon the records in these several cases, and with full consideration of all the interests and things involved, we are convinced that neither of these cases should now be reopened, and that none of the orders entered therein should be modified or vacated. The time that has been spent upon and the thoughtful consideration that has been given to these cases justify the thought that the conclusions which have been so reached should, so far as the records in these cases and the time limit fixed by the act upon the orders of the Commission are concerned, be accepted as final.

The petitions for rehearing, for entertaining supplemental complaint, for modification of orders and for vacation of orders in these cases are denied.

16 I. C. C. Rep.

No. 1724.
CARSTENS PACKING COMPANY
v.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COM-
PANY ET AL.

Submitted January 9, 1909. Decided June 21, 1909.

Rate assessed on a tanning outfit from Milwaukee, Wis., to Tacoma, Wash., found unreasonable. Reparation awarded.

J. E. Belcher for complainant.

George T. Reid for the Chicago, Milwaukee & St. Paul Railway Company and Northern Pacific Railway Company.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

On June 28, 1906, the complainant shipped from Milwaukee, Wis., to Tacoma, Wash., via defendant's lines, 3 carloads of property termed "second-hand tanner's outfit," set forth in the petition as follows: 1 iron wringer, 6 paddle wheels (wood), 3 square tanks (wood), 1 washing tub (wood), 1 round tank (wood), 1 crusher (wood), 1 brush wheel (iron), 1 beater (wood), 1 emery wheel, 1 beater (wood), 1 stocker wheel, 1 drum, cogwheels, all weighing, approximately, 47,500 pounds. The agent of the initial carrier designated this material as cooperage, entitled to the published rate of \$1.35 per 100 pounds, minimum 16,000 pounds, which would have made the total charge \$648. On arrival at Tacoma the inspector of the Transcontinental Freight Bureau raised the classification to the basis of machinery and assessed thereon the machinery rate of \$1.40 per 100 pounds, 24,000 pounds minimum, a total of \$1,008.

Complainant contends: (1) That the rate assessed was not in accordance with the tariff; (2) that the rate of \$1.40 per 100 pounds, carload minimum 24,000 pounds, as applied on tanning outfits, is unjust and unreasonable. Reparation is sought for the alleged unreasonable charges collected.

The provisions of the tariff covering this traffic are far from clear. It is difficult to see how this shipment could be considered cooperage, and it is equally difficult to understand how the machinery rate could properly be assessed. We are inclined to think that no item in the tariff was exactly applicable. In any event we are convinced that a rate of \$1.40 per 100 pounds, minimum 24,000 pounds, as applied on shipments of this character, is unjust and unreasonable. A tanning outfit consists of bulky, low-grade freight of little value. In this case it appears that the charges collected were considerably in advance of the value of the consignment. We find that a reasonable rate for this service would be \$1.35 per 100 pounds, minimum weight 16,000 pounds. Reparation will be awarded upon this basis, or in the amount of \$360 with interest. We shall not undertake at this time to enter an order looking to the amendment of the tariff, but shall leave it to the carriers to make changes in harmony with these findings.

16 I. C. C. Rep.

No. 1468.
WESLEY J. GAINES ET AL.
v.
SEABOARD AIR LINE RAILWAY ET AL.

Submitted April 9, 1909. Decided June 21, 1909.

Certain bishops of the African Methodist Episcopal Church alleged that the day coaches furnished for colored passengers in the southeastern states are not equal to those provided for white people; that negroes are denied sleeping-car accommodations, and are refused food in the dining cars solely on account of their race and color. The complaint with respect to the day coaches was abandoned in view of the great weight of the evidence to the contrary, and with respect to eating accommodations was materially modified by concession; most of the complainants and their witnesses testified that they do ride upon the sleeping cars; *Held*, That undue discrimination or prejudice has not been shown and that the complaint should be dismissed.

C. P. Goree for complainants.

Ed. Baxter and *R. Walton Moore* for all the railway defendants.

Sanders McDaniel for the Southern Railway Company.

G. S. Fernald and *Albert Howell, jr.*, for the Pullman Company.

REPORT OF THE COMMISSION.

COCKRELL, *Commissioner*.

This case was brought by five bishops of the African Methodist Episcopal Church and alleges "unjust discriminations and undue and unreasonable prejudices and disadvantages to complainants and other passengers of the African race in respect to the transportation and accommodations" furnished by the defendant carriers. The complaint set forth three separate particulars in which it is alleged the defendants discriminate against colored passengers: (1) That the character and condition of the passenger coaches furnished for the negro passengers are not equal to the accommodations provided for white travelers; (2) that descendants of the African race are denied sleeping-car accommodations by the defendants either by (a) refusing to sell to negroes tickets for such accommodations, or

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by (b) denying negroes holding such tickets the right to occupy and use the space called for by such tickets; and (3) that defendants refuse passengers of the African race access to dining cars and refuse to furnish such passengers food and refreshment solely because of their race and color. The complaint concerns interstate passenger transportation and is confined to the southeastern states of the Union, particularly to the through trains of the defendants, the Seaboard Air Line Railway, the Richmond, Fredericksburg & Potomac Railroad, the Southern Railway, and the Central of Georgia Railway between Atlanta and Washington, Atlanta and Norfolk, Washington and Richmond, and similar long-distance journeys.

The first charge of the complaint, the one concerning the ordinary passenger day coaches, was so completely disproved by the evidence that the attorney for complainants opened his brief with the following avowal:

I shall not insist on the charges which relate to the day coaches engaged in interstate traffic. It is apparent from the great weight of the evidence that the several defendant railway companies have greatly improved the service in so far as it relates to day coaches. It is true that, in quite a number of instances, the evidence shows that the accommodations furnished the negro race by these companies have not been equal to those furnished the white race; but these were exceptional cases, resulting from some particular emergency.

Indeed, a careful examination of the evidence justifies a further exoneration of the defendants in this regard; for it shows that not only are the day-coach accommodations offered colored passengers equal to those furnished white travelers, but that in most cases actually the same equipment is used to-day for colored and to-morrow for white passengers, and considering the relative proportions of white and colored passengers more space is provided the colored than the white traveler.

The complaint, therefore, is narrowed to the charges of undue discrimination and prejudice against colored passengers in the matters of sleeping and eating accommodations. With respect to eating accommodations either by service in the dining car proper or at the passenger's seat in the Pullman or day coach in which he may be riding, the evidence is clear that colored passengers do get the same service that is furnished the whites, the only discrimination made being in the hours of service or the place of service. For instance, colored passengers are not served with meals in the dining car at the same time with white passengers, but in consideration of the relative amount of long-distance travel of the two races they are served on the third and last call. If the colored passenger does not desire to wait until the last call is made, he is, upon his request, served with the same food and with the same care at his seat either in the Pullman or in the ordinary coach, portable tables being used for this purpose. In this

connection the declaration of the attorney for the complainants made at the close of the testimony in chief is as follows:

If you want to give the colored passengers accommodations in the dining cars in which you feed the white passengers at different hours, so long as those hours are reasonable, we are perfectly willing and content with that kind of arrangement; and if they are willing to sell us sleeping-car accommodations out of the city of Atlanta just like they sell them to the white passengers who have railroad tickets, we have no complaint to make; if they have not been doing it, if they will do it in the future, that will satisfy us.

People of color do ride upon the Pullman or sleeping cars, and most of the witnesses for the complainants, as well as all of the witnesses for the defendants, so testified. The real discriminations brought out in the evidence indicate that the trouble is not so much with the rules and regulations of the defendants, the Pullman Company and the roads already named, as with the application of those rules and regulations to individual travelers and with the conduct of the carriers' servants.

The evidence is convincing that none of the defendants has any rule or regulation, either as to sleeping or eating accommodations, for colored passengers that discriminates unduly against the black man and in favor of the white. Bishop Gaines, one of the complainants on page 49 of the record, after describing how he got his Pullman tickets from officials of the various roads, added:

It is the little fellows around the stations that sell tickets. If they were all like these good men that I know of it would be very pleasant, but I can't handle them.

Bishop Smith, another of the complainants, declared on pages 86 and 87 of the record:

I would like to be allowed to say that I am not a party to the complaint against the Pullman Company, * * * because I think the Pullman Company is doing the best it can under the circumstances.

Throughout the section of the country embraced in this complaint the laws of the several states provide for the separation of the white and black passengers in the trains. These laws, in so far as they provide merely for such separation of the races, have been upheld by the courts as reasonable police regulations designed for the comfort, peace, and happiness of the black people as well as of the white, and, when equal accommodations are furnished the two races, are not open to just criticism from any one. Nor are these laws and customs fairly open to comparison with the laws of states or countries where there is no race question because of the inconsiderable number of the black race.

A careful examination of the record before us indicates that notwithstanding the legally correct attitude of the defendants and their responsible officials, including city and district passenger agents, the

colored traveler is not welcomed by the average ticket seller or the average Pullman conductor when he applies for sleeping-car accommodations. This condition is due to many things, the chief among which may be stated as (1) the exceeding infrequency of the demand; (2) the fear of breaking state laws in acceding thereto; (3) the natural, if legally inexcusable, confusion of the lay mind with respect to state and federal laws and the rights, obligations, and penalties attaching thereto; and frequently (4) the manner of the making of the demand.

The testimony is clear that colored travel is mainly for short distances, whether between intrastate or interstate points, and that the proportion of negro to white passengers on long journeys, such as make sleeping accommodations necessary, is infinitesimal. During a period of eight days during which the Seaboard Air Line made an actual count of Pullman passengers there were 5,268 white and 33 colored passengers, or less than two-thirds of 1 per cent; over the Southern Railway the average proportion of negro to white passengers, without regard to Pullman or day coaches, between Washington and Atlanta was stated to be one in a thousand, or one-tenth of 1 per cent. It is a matter of common observation that throughout the land, without regard to the section, to the local conditions, or to the local laws, the proportion of colored Pullman travel to white Pullman travel is infinitesimal in amount. This is due in part to the economic situation of the negro race and will continue until the wealth, occupations, activities, and interests of the black race approximate those of the white race.

In fairness to the complainants and to the defendants we can not dismiss this complaint without pointing out that certain portions of the record now before us seem to indicate that a *modus vivendi* may be arrived at if the colored travelers and the carriers' servants will approach the situation each with respect and consideration for the prejudices and difficulties of the other. For instance, it is a matter of general knowledge and is stipulated in the record "that the so-called race riot which occurred in Atlanta in the year 1906, began on or about September 22, 1906, and continued for about three days, more or less." Yet in view of that fact and the state of feeling it indicated, one of the witnesses for the complainants, with reference to an experience he had coming from Richmond, Va., probably at Hamlet, N. C., on the night of October 6, 1906, or immediately after those riots and while the newspapers were full of accounts of violence in Atlanta, testified as follows:

He (the conductor) was walking up and down in front of it (the sleeping car), and I accosted him. I said, "You are the conductor?" He said, "I am." I said, "I would like to have a berth to Atlanta." "Well," he said, "I don't know about that." I paced up and down the car with him there and finally I confronted him, and I said, "Let me ask you one question." I said, "Do you mean to tell me that

you refuse to sell me a berth on this car?" He said, "I do not, but I don't want to." I said, "It isn't a question of what you want to do." I said, "I want a berth; I want to know right now what you are going to do." He said, "If I sell you a berth, there will be trouble down the road." I said, "All right, sir; I will take care of the trouble; I will take the berth." I got on the car, and there was no trouble. Now, the point is this, and the general complaint of the colored people, as a rule, is the unfairness, the attempt on the part of railroad agents, servants, as they say, to make it hard for them to get just such things as they could pay for.

The point of what the conductor said might very well have been that, in view of what had recently occurred in Atlanta and of the state of public feeling there, he did not care to assume the responsibility for placing the colored traveler to Atlanta in that car.

Another incident that throws light on the general situation was testified to by the Atlanta city passenger and ticket agent of the Seaboard Air Line, as follows:

Last November a little while after I took the office, a porter of a hotel came in and asked for a berth to Washington, and I sold him the berth, and a little later I found out that that berth was for a colored passenger. I had just taken the ticket office, and I was under the impression that the Georgia laws required separate compartments for colored and white travel, so I went down to the station and looked up this colored passenger, and explained my understanding to him, and told him that I would rather take the berth back, and keep us both out of trouble, and reserve the berth for him up the line, and let him get it after starting; he gave me back the berth (ticket) and I gave him back \$4, and reserved the berth after he got into the next state. He was en route to Washington. I have since found that on interstate travel the Georgia laws have nothing to do with it. Since then I have sold several berths to colored passengers.

Throughout the record an attempt was made on behalf of the complainants to prove that colored passengers are discriminated against in the sale of accommodations on train No. 38 of the Southern Railway. This train and its companion No. 37, running in the opposite direction, are the finest trains on that road. It is composed exclusively of Pullman cars, and has the desirable features of a club car and an observation car. It runs upon a limited schedule between New Orleans and New York, and reservations on this train are in great demand at every station where it stops. A large part of the travel on this train is through from, and to, points beyond Atlanta and Washington, and reservations for space must often be made days in advance. That colored people at Atlanta find it impossible to get reservations on that train within a few hours of the time of departure indicates absolutely nothing in the nature of discrimination. White people are glad to get such reservations and put themselves to some trouble in advance to get them. This case was heard at Atlanta on the 17th, 18th, and 19th of September, 1908; September 19 three Interstate Commerce Commissioners desired to get reservations on train No. 37, New York-New Orleans Vestibuled Limited, from Washington to Atlanta, and failed; they were obliged to take a

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slower train, without a club or observation car, and over a longer route.

The record is quite clear on one point: That in compliance with the laws of Georgia and the sentiment there negroes are assigned to the drawing-room, or separate compartments, so far as possible even in interstate travel. But the record is not clear whether when so assigned they are charged solely for the actual space they occupy. One of the bishops testified that he usually had to pay for the whole drawing-room and seldom or never got the use of that compartment for the price of a single berth. While it is barely possible, in view of this bishop's reputed wealth, that the ticket agents assumed he desired the whole space reserved, still even the appearance of discrimination should be avoided. In this connection it may be useful to quote a part of the testimony of the general passenger agent of the Southern Railway:

If a negro man, a proper kind of a man, a man who is clean and respectable, will go to our ticket office in Atlanta, and want a sleeping-car berth, and there are berths available, accommodations available, our agent would attend to him just the same as he would a white man; but when you ask whether or not he can go and get one just the same as a white man any time, that has no bearing on the case, because white men are getting berths and making reservations every day, whereas the application of a colored man is very infrequent, so infrequent that we undertake as far as we can to sell them a berth in a stateroom or drawing room, as you may choose to call it, which is superior, equal to if not superior, to the accommodations furnished in the body of the car. It is always my understanding that that is very much more satisfactory to the colored man, to be separated from the white people in a separate compartment, than to be mixed up there in the body of the car. I don't believe I know of a colored man that wants to ride on a sleeping car that would not prefer that; it gives him all of the privileges of privacy, and relieves him of any embarrassment, and is likewise more satisfactory to the white people.

Undue discrimination or prejudice has not been shown in any of the particulars alleged, and the complaint must be dismissed. It will be so ordered.

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No. 1941.
THOMAS CARLIN'S SONS COMPANY
v.
BALTIMORE & OHIO RAILROAD COMPANY ET AL.

Submitted April 16, 1909. Decided June 21, 1909.

Reparation awarded on shipment of machinery from Allegheny, Pa., to Victoria Mines, Ontario, Canada, because through rate greater than combination of locals was charged.

W. J. Herman for complainant.

William Ainsworth Parker for defendants.

REPORT OF THE COMMISSION.

PROUTY, *Commissioner*:

On October 20, 1906, complainant shipped one carload of machinery, weight 58,400 pounds, from Allegheny, Pa., to Victoria Mines, Ontario, Canada, which was routed and moved via the Baltimore & Ohio Railroad to Painesville, Ohio, the Lake Shore & Michigan Southern to Buffalo, N. Y., and thence via the Soo branch of the Canadian Pacific Railway. A rate of 48 cents per 100 pounds was collected at destination, in accordance with supplement No. 3 to B. & O. tariff, I. C. C. No. 4829.

At the time this shipment moved there was in effect a rate on machinery of 11½ cents per 100 pounds in carloads from Allegheny, Pa., to Buffalo, N. Y., under B. & O. tariff, I. C. C. No. 5122, and a rate of 28½ cents per 100 pounds from Buffalo to Victoria Mines, Ontario, under Michigan Central tariff, I. C. C. No. 1470, making a through combination rate of 40 cents per 100 pounds from Allegheny, Pa., to Victoria Mines, Ontario.

Complainant contends that the through rate was unjust and unreasonable to the extent that it exceeded said combination of locals, and it asks for reparation in the sum of \$46.72, being the difference between the through rate and the combination rate, based on the weight of the shipment. The claim was first presented to the
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Commission by informal complaint filed August 29, 1907. The formal complaint was filed December 14, 1908. Effective October 28, 1907, defendants published a joint through rate of 40 cents per 100 pounds via the route shipment moved, B. & O. tariff, I. C. C. No. 6947.

At the hearing it was conceded by defendants that under the circumstances the through rate charged on the shipment in question should not have exceeded the combination through rate, and that complainant was therefore subjected to an unjust and unreasonable charge to the extent of the difference between said rates of 8 cents per 100 pounds; that complainant was entitled to reparation in the sum of \$46.72, which defendants are ready and willing to pay.

Upon the foregoing facts we find that the rate of 48 cents per 100 pounds, exacted by defendants on said shipments of machinery from Allegheny, Pa., to Victoria Mines, Ontario, Canada, was unjust and unreasonable to the extent that it exceeded a rate of 40 cents per 100 pounds, and that complainant is entitled to reparation in the sum of \$46.72, with interest.

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No. 1680.
AMES BROOKS COMPANY
v.
RUTLAND RAILROAD COMPANY ET AL.

Submitted May 21, 1909. Decided June 21, 1909.

A tariff fixing a rate on ex-lake grain for export from Ogdensburg, N. Y., to Boston, Mass., having been legally established, it was the duty of the defendants to apply the rate so published and in effect upon a shipment made by complainant between those points; and if, as claimed by complainant, a contract was made with defendants for a lower charge upon that shipment, such contract was not binding, and its violation furnishes no ground for redress under the act to regulate commerce.

G. F. Reed and *B. K. Reed* for complainant.

E. J. Rich for Boston & Maine Railroad.

G. P. Furber for Rutland Railroad Company.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

The complainant, a grain firm doing business at Duluth, Minn., made shipment, about June 1, 1908, of 50,000 bushels of grain by steamer from Duluth to Ogdensburg, N. Y. At the time of the shipment the final disposition of the grain had not been determined upon. While it was still upon the water the agent of the complainant in Boston, Mass., had opportunity to sell it for export, and he thereupon applied to the Boston & Maine Railroad for a rate from Ogdensburg to Boston. The Boston & Maine in turn applied to the Rutland Railroad Company, which operates the line from Ogdensburg to Bellows Falls, where connection is made with the Boston & Maine, and over which this grain must move, for a quotation, and received an answer naming a rate of 3½ cents per bushel "at and east" of Ogdensburg. Upon the strength of this quotation the agent of the complainant concluded his sale and arranged for the ocean transportation of the grain. Having done this he also took from the Boston & Maine a written confirmation of the quotation or rather contract, by which that company and its connection, the Rutland Railroad Company, agreed to transport about 50,000 bushels of grain from Ogdensburg to

Boston for shipment abroad by a steamer which was named, at a rate of 3½ cents at and east of Ogdensburg.

The Rutland Railroad Company owns the capital stock of the Terminal Elevator Company, whose elevator is located at Ogdensburg. This elevator is operated in connection with the Rutland Railroad, although apparently under a separate management, and the only means by which this grain could be transferred from the vessel to the car was through this elevator. The charge made by the elevator for taking the grain from the hold of the vessel and putting it into the car is one-half cent a bushel.

Large quantities of grain, known as "ex-lake grain," are handled by water and by rail, both for domestic consumption and for export, through various lake ports in the same way that this was handled through Ogdensburg. The elevators which take the grain from the vessel and put it aboard the cars are sometimes owned by the railroads interested and sometimes by private individuals. At the present time the charge is generally, if not uniformly, one-half cent per bushel; and this is always included in the rate, which is generally described as a rate "at and east" of a given port.

The tariff of the defendants under which this grain was carried was issued May 13, 1908, effective June 15, 1908, so that the grain moved very soon after the effective date of the tariff. This tariff, as filed with the Commission and as printed, simply provided a rate of 3½ cents from Ogdensburg to Boston, no mention whatever being made of elevation or elevation charges. The tariff which this superseded had provided that the railroad would pay the cost of elevation. On June 12, and after the contract for shipment had been entered into between the complainant and the Boston & Maine Railroad, acting for the two defendants, the Rutland Railroad sent to the Boston & Maine a tariff upon which were written in typewriting these words: "To this rate add one-half cent per bushel for elevating and loading."

Upon receiving this tariff the agent of the Boston & Maine called the attention of the agent of the complainant to the claim of the Rutland road that there should be added to the 3½ cents a further one-half cent per bushel for the cost of transfer from the ship to the car. The agent of the complainant objected to this, but inasmuch as his contract of sale had been made and his ocean engagement entered into, he was obliged to let the shipment come forward and to pay the one-half cent, amounting, upon the actual quantity shipped, to \$247.34, which the complainant claims to recover in this proceeding.

The Rutland Railroad Company insists that this is a case of the misquotation of a rate; that its rate did not include elevation; that its traffic officials had no right to quote the rate of 3½ cents at and

east of Ogdensburg, and that therefore not the rate quoted but the published rate must govern. The complainant insists that the tariff of the defendants was susceptible of the interpretation put upon it by the defendants and that therefore they should be compelled to apply that interpretation.

Carload freight is ordinarily loaded by the shipper. Where elevation is included in the rate the tariff invariably so specifies, and should so specify, according to the provisions of the sixth section. The tariffs of various railways at different lake ports from which this same kind of business is handled without exception state that the cost of elevation is included. The tariff of these defendants which preceded the one in effect at the time of the movement of these shipments plainly stated that the cost of elevation would be borne by the carrier.

As just observed, elevation is uniformly included in the rate under which this ex-lake grain moves from the lake port. The agent of the complainant had every reason to believe that the established rate would include that service and had no reason to doubt that the rate named to him by the Boston & Maine took the grain from the hold of the vessel. He made his contract of sale and his ocean engagement relying upon this representation, which was evidenced by the written statement of the Boston & Maine. Under these circumstances every consideration of justice demands that the elevation charge collected by these defendants should be repaid.

The statute, however, requires carriers to publish their tariffs, and to adhere to those tariffs. In no other way could the discriminations which have existed be prevented. In the enforcement of that statute this Commission has no discretion. If it were to hold that this sum should be repaid its order could not be enforced. The Supreme Court of the United States has decided in several well-considered cases that the misquotation of a rate can not relieve the carrier from its obligation to collect the published rate. *G. C. & S. F. R. R. Co. v. Hefley*, 158 U. S., 98; *T. & P. Ry. Co. v. Mugg*, 202 U. S., 242. The published schedule did not include these elevation charges, and we can not, therefore, order their repayment to the complainant.

The rate collected of the complainant, including the cost of elevation, was 4 cents per bushel. The distance from Ogdensburg to Boston is 393 miles. No claim is made that the charge imposed was unreasonable, and certainly this Commission could not sustain that claim if urged. The complaint will therefore be dismissed.

No. 1827.

P. P. WILLIAMS COMPANY

v.

VICKSBURG, SHREVEPORT & PACIFIC RAILWAY COMPANY
ET AL.

Submitted June 3, 1909. Decided June 21, 1909.

Complainant attacked the rate adjustment from Mississippi River crossings to Texas common points, and asked for lower rates from Vicksburg, Miss., to certain points in northeast Texas. It appears that Vicksburg has the same rates to Texas common points as New Orleans and somewhat lower rates than Memphis, which city intervenes and asks still lower rates for itself; *Held:*

1. That to grant any part of the contentions of complainant or interveners would be to disrupt the grouping of Texas common points, or to rearrange the whole fabric of rates from the Mississippi River.
2. That differentials diminish with increasing distance and vanish when the mileage on which they are based becomes inconsiderable in proportion to the total mileage from basing point to destination.
3. That the evidence was not sufficient either in character or in amount to justify the order prayed for. Complaint dismissed.

W. H. Fitzhugh for complainant.

J. W. Terry for Atchison, Topeka & Santa Fe Railway Company; Pecos & Northern Texas Railway Company; Pecos River Railroad Company; Gulf, Colorado & Santa Fe Railway Company; Southern Kansas Railway Company of Texas; and Texas & Gulf Railway Company.

H. M. Garwood for Galveston, Houston & Henderson Railroad Company; Houston & Texas Central Railroad Company; Houston East & West Texas Railway Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Galveston, Harrisburg & San Antonio Railway Company; and Texas & New Orleans Railroad Company.

J. W. Allen for Missouri, Kansas & Texas Railway Company of Texas.

B. M. Flippin for Missouri Pacific Railway Company, and St. Louis, Iron Mountain & Southern Railway Company.

S. H. West and *Roy F. Britton* for St. Louis Southwestern Railway Company.

E. L. Sargent for Texas & Pacific Railway Company.

T. K. Riddick for Memphis interveners.

REPORT OF THE COMMISSION.

COCKRELL, Commissioner:

This case attacks the adjustment of rates from the Mississippi River crossings to Texas common points. The complaint prays for lower rates from Vicksburg, Miss., to certain Texas points; but the comparisons made in the complaint itself with rates from other points and the evidence adduced in the case broaden its scope. In addition the Memphis Freight Bureau and certain Memphis shippers have intervened and filed a brief partly in support of the original complaint, but mainly in behalf of Memphis.

The complaint alleges:

That the present basis of rates from Vicksburg, Miss., via Shreveport, La., to certain points in Texas, which will be more fully designated below, is neither sound in principle nor equitable in practice, but is arbitrary, unreasonable, and discriminative and out of all proportion to the rates which apply from St. Louis, Memphis, New Orleans, and Galveston, and other basing points or trade centers to the same territory.

In support of this allegation the mileages from certain Mississippi River crossings and from Galveston to certain selected Texas common points are set forth in tabular form and the rates compared with such mileages. An examination of the common points selected for these comparisons shows that, with the exception of Fort Worth, they are all north and east of Waco. Of the 23 points selected for this comparison of rates and distances from St. Louis, New Orleans, Memphis, Galveston, and Vicksburg all but eight are upon the lines of the Texas & Pacific Railway in the extreme northeastern part of Texas, and the eight not on the lines of that road are less distant from Vicksburg than the more distant stations named on the Texas & Pacific Railway, such as Sherman and Fort Worth. A glance at the map shows that the points selected by the complainant for comparison of distances and criticism of rates are in a group almost due west of Vicksburg and that the mileages are in most instances almost air-line distances from Vicksburg via the Vicksburg, Shreveport & Pacific Railway to Shreveport and thence via the Texas & Pacific Railway to the stations named. We insert the tables of mileages and rates to which reference is made.

Mileage to Texas common points.

Texas common points.	From—				
	St. Louis.	New Orleans.	Memphis.	Galveston.	Vicksburg.
	Miles.	Miles.	Miles.	Miles.	Miles.
Dallas.....	703	515	508	321	359
Fort Worth.....	740	547	540	344	391
Terrell.....	673	484	476	335	328
Wills Point.....	661	468	460	319	312
Big Sandy.....	607	414	406	313	253
Mineola.....	630	437	429	290	261
Longview.....	584	391	383	280	235
Marshall.....	561	368	360	303	212
Texarkana.....	490	435	293	370	245
Troupe.....	620	427	419	244	271
Henderson.....	622	429	421	273	273
Jacksonville.....	638	445	437	226	289
Tyler.....	628	435	427	255	279
Athens.....	665	472	464	248	316
Corsicana.....	726	510	496	267	354
Paris.....	585	526	384	461	336
Clarksville.....	555	496	354	431	306
Sherman.....	648	589	444	385	399
Honey Grove.....	616	557	415	492	367
Greenville.....	627	568	426	341	340
Denison.....	648	589	451	386	362
Jefferson.....	541	372	344	319	217
Sulphur Springs.....	590	535	393	373	308

Rates to Texas common points; effective August 10, 1908; I. C. C. No. 525 and No. 517.

From—	Class.										Bag- ging and ties.	Wire and nails.
	1.	2.	3.	4.	5.	A.	B.	C.	D.	E.		
St. Louis.....	\$1. 47	\$1. 29	\$1. 12	\$1. 02	\$0. 80	\$0. 85	\$0. 75	\$0. 62	\$0. 50	\$0. 43	\$0. 37	\$0. 56
Memphis.....	1. 37	1. 19	1. 04	. 95	. 75	. 78	. 70	. 57	. 45	. 38	. 33	. 51
New Orleans and Vicks- burg.....	1. 37	1. 19	1. 02	. 93	. 74	. 78	. 69	. 56	. 44	. 37	. 32	. 50
Galveston.....	. 87	. 78	. 65	. 61	. 47	. 49	. 43	. 36	. 25	. 19	. 21	. 26

The Texas common point, or group, system of rate making has often been considered by this Commission and Waco has usually been taken as the center of the group for the purpose of considering mile-ages. *Dallas Freight Bureau v. M., K. & T. Ry. Co.*, 12 I. C. C. Rep., 427. With relation to Texas traffic, the main Mississippi River crossings are St. Louis at the north and New Orleans at the south. Vicksburg is undoubtedly nearer to the extreme northeastern portion of Texas than any other Mississippi crossing; but rates that are made with respect to vast groups, such as Texas common points, and adjust-ments with respect to crossings, such as the Mississippi River cross-ings extending north and south more than 700 miles, can not with entire fairness be considered solely from the standpoint of the mileage from the nearest air-line gateway to a particular section of the group.

The complainant's case rests upon the mileage theory of rate mak-ig. The conditions shown by the evidence, however, make com-arisons of mileage noncontrolling in determining either the reason-

ableness of the rates themselves or of their discriminatory character. Vicksburg is geographically a Mississippi River crossing; from a transportation standpoint it is the place where the traffic carried by the Queen & Crescent system passes over into Louisiana; that system does not now reach Texas, but terminates at Shreveport whence traffic for Texas must be handled either by the Texas & Pacific Railway, the Cotton Belt, or the Houston & Shreveport Railway. The rates to the 23 points specified by the complaint are also the rates to all other common points in Texas and no reason is suggested as a basis for destroying the present grouping system in Texas.

Vicksburg, with only one line of railway toward Texas, has the same rates that apply from New Orleans, which has two through lines and a third line terminating at Shreveport, the terminus also of the only line from Vicksburg. Memphis, with four rail lines to Texas, has rates somewhat higher to Texas than Vicksburg, and St. Louis, which is the main Texas gateway, has five direct lines to Texas.

Not only are the traffic conditions different with respect to Vicksburg and the other Mississippi River crossings, but the commercial conditions also are not the same. The evidence discloses that the complainant desires to compete in northeastern Texas with other middlemen in the sale of bagging and ties. These commodities are not made either in or near Vicksburg. Bagging comes either from St. Louis, the rate by rail being in actual competition with the rate by river, from the Atlantic seaboard or from foreign ports via New Orleans and Galveston, and the gist of the complaint is that as to bagging the rates be made so low from Vicksburg that the complainant may be enabled to do a jobbing business in northeastern Texas in competition with primary markets or ports of entry. Cotton-bale ties come mostly from Pittsburg, but from whatever point of origin they actually come the selling price in the southwest is based upon the Pittsburg price plus the through rate from Pittsburg to the place of consumption; yet the complainant's prayer is designed to obtain rates out of Vicksburg that would enable it to compete in northeastern Texas after stopping the ties in Vicksburg.

That the through rate should not exceed the sum of the locals is a doctrine well established, but it does not follow as a corollary that the sum of the locals should always be reduced to equal the through rate. Such a rate situation might arise upon a pure mileage basis, but such a basis would exclude the railways touching Vicksburg from almost all through traffic from Central Freight Association territory to Texas. From most primary markets in Central Freight Association territory and the Atlantic seaboard the rates are based upon St. Louis or New Orleans, the rate by rail to New Orleans being made in competition with water carriers and the New Orleans adjustment

being applied generally to Vicksburg traffic. If the carriers via other Mississippi crossings desire to participate in the business at all they must meet the rates via these main gateways; and it is not reasonable to expect the rates into Vicksburg and the rates out of Vicksburg to be thereafter adjusted in order to enable jobbers in that city to compete with primary markets having through rates from point of production to point of use. We know of no law, common or statute, under which the jobber is entitled to distribute commodities under as low or lower total freight rates as the through rates from point origin to point of consumption. In *Monroe Progressive League v. St. L., I. M. & S. Ry. Co.*, 15 I. C. C. Rep., 534, we considered the general rate adjustment as applying to Shreveport, Alexandria, Monroe, and Vicksburg, and nothing in this case indicates the necessity of disturbing that adjustment or of giving Vicksburg a rate advantage over those jobbing points.

The complainant, however, does not attack the rates into Vicksburg; the rates from Vicksburg to certain selected Texas common points only are alleged to be unlawful. Vicksburg rates apply not only to those near-by and almost air-line points, but to all Texas common points, and no transportation or commercial necessity has been shown for segregating these points and establishing rates to them from Vicksburg. Particularly is this true in view of the facts that the present complaint is that of a single jobber and that the haul from Vicksburg to Texas is necessarily a two-line haul.

It is not necessary to consider the rates and mileages from Galveston to the points in northeastern Texas named by the complainant. Those rates are intrastate rates and via other lines than those leading from Vicksburg, so that there can be no valid comparison between them.

The brief for the Memphis Freight Bureau et al. is based upon the same mileage theory as that of the complainant. According to that brief, Memphis has certain differentials (really differences in local rates, not differentials at all) under St. Louis to Little Rock, Ark. For instance, the difference in first class rates from St. Louis and from Memphis to Little Rock is 30 cents per 100 pounds; the differential under first class rate from St. Louis to Texas common points allowed to Memphis is 10 cents per 100 pounds. These higher differences, or "differentials," are urged for application to Texas points as follows:

It seems to us too clear to require any argument that if this differential in rates to Little Rock is just and fair, the same differential ought to apply to all points beyond Little Rock and which must be reached by passing through that city.

Waiving the fact that the differences in rates from Memphis to Little Rock and from St. Louis to Little Rock are not differentials

proper, it may not be inappropriate to point out that only under a mileage scheme of rates could such a conclusion follow. Nothing is more certain concerning transportation in this country, either as to cost of service to the carrier or value of service to the shipper, than that as the mileage increases the total cost increases, but the cost per ton per mile decreases. This is true, although it can not be stated in exact mathematical terms. It follows, and with particular force as applied to grouped points of origin and grouped points of destination, that differentials either above or below the rates from any given point become less and less important as distance of ultimate destination increases. Stated in other words, differentials diminish with increasing distance and vanish when the mileage on which the differential is based becomes inconsiderable in proportion to the total mileage from basing point to destination.

To grant any part of the prayers or contentions of the complainant, or of the interveners, would be to disrupt the grouping of Texas common points, or to rearrange the whole fabric of rates from the Mississippi River. There is nothing in the testimony to warrant any such action by this Commission, and the complaint must be dismissed.

An order in accord herewith will be issued.

16 I. C. C. Rep.

No. 1714.

RACINE-SATTLEY COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
ET AL.

Submitted February 10, 1909. Decided June 23, 1909.

Reparation awarded complainant because of excess weight charged on shipment of wagons, where 2 cars of smaller size but of larger aggregate minimum weight were furnished instead of one car of smaller minimum weight ordered, which would have held the wagons.

James T. Morrison for complainant.

William Ellis for Chicago, Milwaukee & St. Paul Railway Company.

REPORT OF THE COMMISSION.

COOKRELL, *Commissioner*:

The complainant states that about April 28, 1908, it desired to ship from Racine, Wis., to Abilene, Tex., 31 farm wagons, weighing 36,200 pounds, and applied to the agent of the defendant at Racine, the Chicago, Milwaukee & St. Paul Railway Company, hereinafter called the C., M. & St. P. Ry., for a 50-foot box car which would easily hold the 31 farm wagons and which kind of car was among others named in the defendant's tariff; that it was not convenient for the defendant to furnish such a car on account of the scarcity of cars at that time, and thereupon, for its own convenience, the said railway company furnished two 36-foot cars, in which the shipment was made, and complainant, against its will, paid at the rate on 48,000 pounds instead of the rate on 36,200 pounds, the actual weight of the wagons, and the weight on which the rate would have been charged had a 50-foot box car been furnished; that the only minimum specified in the defendant's tariffs for the 50-foot box cars, the 36-foot box cars, and all other box cars, was 24,000 pounds. The complainant believed that there were certain rules in effect that when a carrier furnished smaller cars in lieu of a car of larger dimensions ordered, only the actual weight of the shipment would be charged for, and alleges that it was unreasonable and unjust to charge for 48,000 pounds instead of for the actual weight of the shipment, 36,200 pounds, and that by reason of the premises the defendants have subjected complainant to the payment of an unreasonable and unjust rate of

transportation, in violation of the act to regulate commerce, to the damage of the complainant in the sum of \$93.22, for which reparation is asked.

In the answers filed the C., M. & St. P. Ry. admits the statements in the complaint as to the shipments, but denies that the rates were unreasonable and excessive.

The St. Louis & San Francisco Railway Company denies any responsibility in the premises, and no answers were filed by the other defendants.

The defendant, the C., M. & St. P. Ry., at the hearing, by its attorney, admitted "negligence in not furnishing to the shipper a car of the capacity ordered, which resulted in the overcharge in this case, it being a through shipment beyond the rails of the Chicago, Milwaukee & St. Paul line; that this company assumes responsibility therefor and will agree to make reparation if ordered by the Commission. The tariffs of the Chicago, Milwaukee & St. Paul Railway Company provided that where a car of a certain dimension is ordered and it is not possible to furnish that dimension, two cars may be furnished to be loaded at the minimum provided for the larger car."

The facts in this case are that the shipments as stated and of the weight named was made at the time named and a 50-foot box car was called for and would easily have held the 36,200 pounds, the weight of the 31 wagons; that the defendant, the C., M. & St. P. Ry., had such cars and also cars of less dimensions and in its tariffs named a minimum of 24,000 pounds for the cars of each different dimension. For its own convenience, in consequence of a scarcity of cars, it did not furnish the 50-foot box car, but did furnish two 36-foot box cars, and the complainant was made to pay the rate, 79 cents per 100 pounds on 48,000 pounds, the minimum of the two 36-foot cars, which was \$93.22 more than it would have paid had the 50-foot box car been furnished. Supplement No. 14 to Southwestern Tariff Committee tariff, I. C. C. No. 481, names through rate of 79 cents per 100 pounds from Racine, Wis., to Abilene, Tex., on agricultural implements, wagons (farm) or parts of same, including feed boxes (limited to one box to each wagon), rough or finished, and remained in force until April 10, 1908, when the rate was advanced to 85 cents per 100 pounds.

This is, in some respects, an exceptional case, and under all the facts and circumstances in this case the Commission finds that the charge of 79 cents per 100 pounds on 48,000 pounds instead of 36,200 pounds was unreasonable and unjust and that reparation of the charges in excess of 36,200 pounds at the rate of 79 cents per 100 pounds, amounting to \$93.22, should be made by the defendant, the Chicago, Milwaukee & St. Paul Railway Company.

An order will be issued accordingly.

No. 2351.

B. F. TYLER COMMISSION COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
ET AL.

Submitted May 25, 1909. Decided June 24, 1909.

Class rate charged by principal defendant for the transportation of complainant's carload of baled hay originating at Batesville, Kans., from Kansas City, Mo., to Clinton, Ohio, found unjust and unreasonable. Reparation awarded on basis of reestablished lower commodity proportional rate.

C. W. Durbin for complainant.

Martin L. Clardy and *James C. Jeffery* for Missouri Pacific Railway Company.

William Ellis for Chicago, Milwaukee & St. Paul Railway Company.

REPORT OF THE COMMISSION.

COCKRELL, *Commissioner*:

Complainant alleges that about July 18, 1907, it received a carload of baled hay, shipped from Batesville, Kans., over the line of the defendant, the Missouri Pacific, to Kansas City, and thence via the line of the defendant, the Chicago, Milwaukee & St. Paul Railway Company, to Clinton, Iowa; that for the haul from Kansas City to Clinton charges amounting to \$53.38 were assessed, based on the class C rate of 17 cents; that such charges were excessive, unreasonable, and unjust to the extent that they exceeded 12½ cents. Reparation in the sum of \$14.13 is asked.

The Missouri Pacific answered denying liability.

The Chicago, Milwaukee & St. Paul Railway Company answered admitting the material facts charged in the complaint and stipulating and agreeing that the complaint be determined upon the pleadings filed and waiving formal hearing. The case, however, was set for hearing May 25, 1909, and at the hearing the complainant appeared, but no one appeared for the defendants. The complainant presented

the proofs of the shipments and at the close the chief clerk of the general freight agent of the Missouri Pacific Railway Company appeared and requested that his appearance be entered.

The facts are that this shipment was made as stated and that for years prior to June 30, 1907, the defendants had rates on carload hay, originating at points beyond Kansas City, of 12½ cents from Kansas City to Mississippi River points which included Clinton, Iowa, being proportional commodity rates filed by the Western Trunk Line committee. These rates were canceled June 30, 1907, and the regular class rates became effective, establishing the 17-cent rate from Kansas City, Mo., to Clinton, Iowa. The defendant, the Chicago, Milwaukee & St. Paul, by tariff effective September 9, 1907, restored the original commodity proportional rates of 12½ cents.

Similar cases have been heard and decided by this Commission: *North Brothers v. C., M. & St. P. Ry. Co.*, 15 I. C. C. Rep., 70; *Kansas City Hay Co. v. C., M. & St. P. Ry. Co.*, 16 I. C. C. Rep., 100.

The Commission finds that the said class rate charged, 17 cents, was excessive, unjust, and unreasonable, to the extent that it exceeded 12½ cents, and that the complainant is entitled to reparation from the Chicago, Milwaukee & St. Paul Railway Company in the sum of \$14.13 with interest.

The case is dismissed as to the Missouri Pacific Railway Company, and an order will issue against the Chicago, Milwaukee & St. Paul Railway Company.

16 I. C. C. Rep.

No. 1829.
WILLIAM A. REDDICK
v.
MICHIGAN CENTRAL RAILROAD COMPANY.

Submitted March 19, 1909. Decided June 21, 1909.

Defendant ordered to maintain a rate of 17 cents per 100 pounds for the transportation of mole traps, L. C. L., in crates, from Niles, Mich., to Chicago, Ill.

William A. Reddick for complainant.

Blackburn Esterline for defendant.

REPORT OF THE COMMISSION.

COCKRELL, Commissioner:

Complainant is a manufacturer and shipper of mole traps at Niles, Mich. His complaint is that the charge by defendant of 22 cents per 100 pounds for the transportation of mole traps in crates in less than carload lots from Niles to Chicago, Ill., is unreasonable to the extent that it exceeds 17 cents.

It appears that after the complaint was filed complainant was accorded by defendant the 17-cent rate on shipments between the points named on the statement of a representative of defendant that he was entitled to that rate under the classification. We are unable, however, to find any tariff authority for the application of the 17-cent rate to the traffic in question. The classification in force at the time the complaint was filed, and which is still in force, rates animal traps, L. C. L., in bundles, first class; in barrels or boxes, third class. Michigan Central tariff, I. C. C. No. 2716, which was then and still is in force, names rates on the above classes from Niles to Chicago as follows:

	Cents.
First class, per 100 pounds.....	22
Third class, per 100 pounds.....	17

No evidence has been submitted by the carrier. It appears, however, that after the complaint was filed the defendant voluntarily accorded the complainant the 17-cent rate. We will assume

that this was accorded on a construction of the classification to include mole traps in crates, although there is no evidence on the subject. The presumption is that the defendant considers 17 cents per 100 pounds a reasonable rate to be applied to the traffic in question between the points named. From this it would appear to follow that a specific rate of 17 cents should be established. If 17 cents is the reasonable rate to be applied, then the 22-cent rate was unreasonable.

Under these circumstances we find that the 22-cent rate applied to shipments of mole traps in less-than-carload lots in crates from Niles, Mich., to Chicago, Ill., was unreasonable, and that the reasonable rate to be applied to such shipments should not exceed 17 cents per 100 pounds. The defendant will be required to establish and maintain the rate herein found to be reasonable on mole traps in crates and treat them in crates the same as in barrels or boxes in third class at 17 cents per 100 pounds for a period of not less than two years from July 15, 1909.

16 I. C. C. Rep.

No. 1948.
BARTLING GRAIN COMPANY
v.
MISSOURI PACIFIC RAILWAY COMPANY.

Submitted April 10, 1909. Decided June 21, 1909.

Defendant ordered to establish no higher rates for the transportation of corn and wheat in carloads from Talmage and Brock, Nebr., to St. Louis, Mo., than are contemporaneously maintained to the same point from Paul and Julian, Nebr.

Paul Jesson for complainant.

Martin L. Clardy, James C. Jeffrey, and James Orr for defendant.

REPORT OF THE COMMISSION.

COCKRELL, *Commissioner*:

This is a complaint that the charge by the defendant of greater compensation on shipments of corn and wheat in carloads from Talmage and Brock, Nebr., to St. Louis, Mo., than is charged on the same traffic from Dunbar and Lorton, Nebr., points on the same line a longer distance from St. Louis, is in violation of the fourth section of the act. It is also alleged that lower rates from Paul and Julian, Nebr., points on another line of defendant a short distance east from Dunbar south, constitute undue discrimination against Talmage and Brock.

From the map the relative positions of the points involved and the distances between them may be readily ascertained. It appears that prior to May 19, 1908, rates on corn and wheat from Brock and Talmage were no higher than from Dunbar and Lorton. The rates to St. Louis in cents per 100 pounds in effect from Dunbar, Paul, and Talmage in the years 1905 and 1906 and as at present in effect by supplement issued by defendant September 4, 1908, are shown by the table following.

Rates to St. Louis, Mo., in cents per 100 pounds.

	Year.		
	1905.	1906.	1908.
From Dunbar:	Cents.	Cents.	Cents.
Wheat.....	14	15	13.25
Corn.....	12	13	12.25
From Paul:			
Wheat.....	13	14	13.25
Corn.....	12	13	12.25
From Talmage:			
Wheat.....	14	15	14.10
Corn.....	12	13	13.00

Rates to St. Louis on this traffic from Lorton were the same as from Dunbar up to August 11, 1908, when a tariff was issued by defendant fixing rates from Lorton at 13.50 cents on wheat and 12.60 cents on corn. Rates to St. Louis on this traffic from points on the line from Auburn to Fort Crook are the same as from Dunbar.

It is asserted by defendant that the rates from Dunbar are based on the Burlington & Missouri River Railroad's local rates to Nebraska City plus the proportional or reshipping rate from Nebraska City to St. Louis; that the local rates on the Burlington from Dunbar to Nebraska City were prescribed by the Nebraska state legislature; that the defendant, in order to get any grain business from Dunbar, must meet the rate of the Burlington; that at Lorton rates are made a little higher than from Dunbar; and that at Brock and Talmage, where the Burlington's influence is not effective, the rates are graded still higher. It is contended that there is a dissimilarity of conditions at Dunbar which justifies the lower rates to that point.

It appears that an act of the state legislature of Nebraska fixing rates on grain locally in that state took effect July 5, 1907. The rates on grain from Dunbar and Lorton remained the same as from Brock and Talmage to St. Louis until May 8, 1908. It is asserted in behalf of the defendant that the through rates were not reduced immediately upon the reduction of the state rates. An effort was made to carry the through rates higher than the combination, but it was found that grain was being shipped into Nebraska City and reshipped therefrom.

It is further asserted by the defendant that rates from Wyoming and Union are based on Nebraska City in the same way that rates are made from Dunbar—that is, the rates made by the Nebraska legislature from Wyoming and Union to Nebraska City are added to the proportional or reshipping rates from Nebraska City to St. Louis. Rates from Plattsmouth and Fort Crook are made by taking the local Nebraska rates from those points, respectively, to Omaha and adding to them the proportional or reshipping rates from Omaha. It is also pointed out that Paul and Julian are on the main line of the defendant, and lower rates have always been made therefrom. Lower rates, it is contended, are justified from these points than from Brock and Talmage, situated on a branch line.

We are of opinion that conditions are different at Dunbar than at Talmage and Brock and that the defendant may be justified in naming lower rates from the former point. We are unable, however, to justify lower rates from Paul and Julian than are made from Brock and Talmage. Shipments on their way to St. Louis are concentrated from all these points at Auburn, and transportation conditions from the latter point must be precisely similar. The distance from Paul and Julian to Auburn is substantially the same as from Brock and Talmage, respectively. It does not appear that a reduction in the rates on this traffic from Talmage and Brock to the rates maintained from Paul and Julian will have any influence upon other rates maintained by defendant in the same general territory. It will enable dealers in grain from these points, so nearly associated as to be in competition for the purchase of their commodities, to do business upon an equal footing. The grain must be bought and sold in competitive markets. The handicap of even a slight difference in freight rates is an important consideration in the buying and selling of grain. Where such handicap is not apparently justified by transportation conditions or compelling competition met by the carrier, it ought not to be imposed on the shippers from any one of the points involved.

The evidence shows that complainant owns elevators at Nebraska City, Wyoming, Paul, Julian, Brock, and Talmage. It is obvious that he must pay substantially the same price for grain at each of the points. There is no transportation reason, so far as the evidence shows, why higher rates to St. Louis should obtain from Talmage and Brock than from Paul and Julian. The evidence does not show, nor are we able to find from other sources of information, any reason why rates south of Nebraska City should be lower than south of Dunbar. The Burlington influence must extend as far south of Nebraska City as Dunbar. Lorton takes a higher rate than Paul. The Nebraska City rate is carried south to both Paul and Julian, although both are further from Burlington competition than Lorton and as great distances therefrom as Brock and Talmage. No question of the reasonableness of the rates is involved in this proceeding, but if the rates from Paul and Julian are remunerative, and it is to be presumed they are, similar rates from Talmage and Brock should also be remunerative.

Because of these considerations we are of opinion and find that the lower rates from Paul and Julian unduly discriminate against Talmage and Brock. An order will be made requiring defendant to establish and maintain for a period of not less than two years rates to St. Louis from Talmage and Brock on corn and wheat in carloads that are no higher than are contemporaneously maintained to the same point on the same traffic from Paul and Julian. An order will be entered accordingly.

No. 1892.

WILLIAM F. BREY, AS CHAIRMAN OF A COMMITTEE OF
THE COMMERCIAL EXCHANGE OF PHILADELPHIA,

v.

PENNSYLVANIA RAILROAD COMPANY ET AL.

Submitted June 2, 1909. Decided, June 21, 1909.

1. Complainant alleges unlawful discrimination against Philadelphia in favor of New York in the matter of free time for the unloading of flour; *Held*, That while there might be circumstances from a transportation standpoint that would justify the difference in time, no opinion is expressed upon this point, but the decision rests upon the ground of the competition of carriers at New York, and competition exists at New York which does not exist in Philadelphia, and such competition justifies a longer free time at the former city.
2. Complainant contends that such discrimination ought not to exist, because the Philadelphia roads have the right to extend the free delivery time in Philadelphia to equal that at New York; *Held*, That if defendants voluntarily extend the time at Philadelphia they must treat alike all points similarly situated, and there might arise a duty to extend the benefit to every other noncompetitive point.

James S. Rogers for complainant.

George Stuart Patterson for Pennsylvania Railroad Company.

W. Ainsworth Parker for Baltimore & Ohio Railroad Company.

Charles Heebner for Philadelphia & Reading Railway Company.

REPORT OF THE COMMISSION.

COCKRELL, Commissioner:

This complaint is brought on behalf of the Commercial Exchange of Philadelphia, and is, that defendants "unlawfully discriminate against the flour trade of Philadelphia and in favor of the flour trade of the city of New York in the matter of free storage granted upon flour handled upon the domestic rate of freight to the two ports, storage being an integral part of transportation." Four days of free storage are allowed on flour in Philadelphia, while ten are allowed in

Jersey City when destined to New York, and three days additional in that city, with one additional day for lighterage from Jersey City to the New York docks, thus making substantially fourteen days from the time the flour arrives at Jersey City to the time of delivery.

The Pennsylvania and the Baltimore & Ohio railroads admit the facts as to free time, referring to their published tariffs as evidence thereof, but denying there is unlawful discrimination.

The Philadelphia & Reading denies any unlawful discrimination, and alleges that it has no railroad that reaches New York City, Jersey City, or other New York Harbor points, and is not responsible for the regulations there. The freight handled by this company reaches New York over the Central Railroad of New Jersey. Complainants asked at the hearing that this railroad be made a party defendant. That request has not been acted on by this Commission, but it is hardly necessary to have it formally made a party defendant to dispose of the issue raised.

From the evidence, it appears that between July 1, 1903, and January 1, 1907, the free time allowed by defendants on flour at Jersey City was twenty days; from January 1, 1907, to April 15, 1907, ten days; from April 15, 1907, to May 23, 1908, four days, and since May 23, 1908, ten days. The above was the general situation at New York over nearly all the lines, but the Lehigh Valley and the Erie did not join in the reduction to four days. This reduction from ten to four days resulted from an understanding among the carriers entering New York, growing out of the congested condition of traffic at that terminal. When the business became lighter one line after another met the competition of the Lehigh Valley and the Erie, and finally the New York Central. After this, the Pennsylvania and the Baltimore & Ohio also restored the ten days' free time at Jersey City.

The traffic officials of the Pennsylvania and the Baltimore & Ohio all testified that there was no necessity from a transportation standpoint for a longer period of free time at Jersey City than four days, and that the time should be the same at Jersey City as at Philadelphia. They did not attempt to justify the ten-day period, except on the ground above stated, that other railroads delivering at New York, which did not reach Philadelphia, allowed ten days and if their roads were to engage in the flour business at New York they must necessarily allow a like free time.

Under this statement of admitted facts the question for decision is whether this Commission may enter an order directing defendants to grant ten days' free storage at Philadelphia, because those carriers meet the competition of other carriers reaching New York and not reaching Philadelphia.

Many years ago the flour merchants of Philadelphia owned and operated private warehouses into which the flour was taken directly from the cars. During the eighties public warehouses were erected— independent corporations, but more or less connected with the several railroads, some owning stock in warehouses. Under contracts with these companies the cars are delivered at the warehouses, the flour unloaded at the expense of the warehouse, and up to April 15, 1907, ten days' free time allowed, and after that free period a fixed charge was made to the merchants for storage. For this service from the time the car was delivered at the warehouse to the end of the ten days the railroads compensated the warehouse companies by paying so much per barrel of flour. On the date named, at the *suggestion of the railroads*, this free time in Philadelphia in these warehouses was reduced from ten to four days and *identically the same compensation was allowed* the warehouse companies as formerly. This four days' free time is the time allowed for the removal of package freight from stations. Where carload shipments of flour and other merchandise are placed for delivery on the track to be unloaded at the expense of the consignee, the free time is only two days, and this is all the free time merchants have at stations other than Philadelphia.

Complainant claims that under the practice of allowing ten days' free time the flour business of Philadelphia has grown up in competition with the business at New York, and now to make a distinction between New York and Philadelphia constitutes an unjust discrimination and substantially injures the business at Philadelphia.

The method of conducting the flour business at Philadelphia, and probably also at New York, has been for years, and still is, to order the flour from the west and dispose of it after its arrival. To do this advantageously it is necessary that samples of the flour upon its arrival should be taken from the car or warehouse and submitted to prospective buyers, who require a day or so to determine its quality, and complainant claims flour can not be disposed of advantageously in four days, but requires at least ten. If it is not disposed of and removed from the warehouses in four days, the owner has to pay storage or remove the flour to his private warehouse, and then again move it after sale to the purchaser, thus requiring an additional drayage and handling, and this additional cost is alleged to be a very material part of the profit on flour.

As stated, the pleadings very sharply draw the issue in this case, which is, that Philadelphia is unlawfully discriminated against in favor of New York in the matter of free time for the unloading of flour. The difference in time allowed not being denied, defendants proceed to justify the same.

Two kinds of circumstances might justify the difference in time. It might be that the necessary method of handling the business at New York would justify a longer time from a transportation standpoint. On the other hand, if the circumstances surrounding the delivery did not justify it, the fact that other carriers entered the port of New York and did not enter the city of Philadelphia, and such carriers allowed a longer period at New York, the defendants, having rails into both cities, might justify the difference in time on account of such competition. In their answers and in their evidence, defendants justified it entirely on the latter ground, that of competition of other carriers at New York, and their witnesses all agreed that four days was time sufficient at either city. Complainant puts in no evidence tending to show that the time at New York is too long, his effort being directed to show that the time at Philadelphia is too short.

While there may be evidence in the record to show that a longer time is justified at New York than at Philadelphia, growing out of the fact that the tariffs of defendants provide for delivery in the city of New York, and in the natural course of business the flour must necessarily be unloaded at the docks on the New Jersey shore and then lightered to any one of the many docks in New York or Brooklyn; while it might be entirely proper that the carriers should hold this flour on the Jersey shore for a reasonable length of time, awaiting orders for delivery to particular docks; while there is testimony to show that often, after notice of the arrival of the car in Jersey City, it is not immediately subject to the disposition of the consignee, owing to the fact that the car can not be promptly located in the extensive terminal yards on the Jersey shore; and while there is other evidence tending to show that some difference in time is justified, yet the evidence is not as clear as it might be, due doubtless to confining the testimony to the issue made by the pleadings, that it was on account of the competition of carriers—in this proceeding we have no occasion to express an opinion as to whether the difference in time is justified, and will proceed to decide the case on the ground of competition of carriers.

On this score not much may be profitably written. That carriers deliver flour in New York City that do not deliver it in Philadelphia, and that such carriers allow ten days free time on the Jersey shore and have allowed it continuously, is not denied.

Complainant contends that because defendants reduced the time from ten to four days in Philadelphia, at the same time they reduced it at New York, and afterwards restored it, that they can not now

claim that the competition at New York justifies a longer period than is given Philadelphia. We do not recognize the force of this argument. No matter what the condition was in the past, the question now before the Commission is whether there is competition at New York of a character which does not exist at Philadelphia.

Complainant contends that there is no competition in New York of the character that justified discrimination against Philadelphia, because the Philadelphia roads have the right to extend the free-delivery time in Philadelphia to equal that at New York. That defendants might voluntarily extend the time at Philadelphia is a matter upon which it is unnecessary to comment in this opinion further than to say that if they should do so there might be a duty to give the same time to every other noncompetitive point. In other words, if the situation at New York grows out of competitive conditions, while the carrier may extend the benefit of such competitive conditions to other points, yet in making such extension it must treat alike all points similarly situated.

We find, as a fact, that there is competition at New York which does not exist at Philadelphia and that such competition creates the dissimilarity in circumstances and conditions which justifies a longer free time at the former city and we express no opinion as to the reasonableness of the free time at either place.

An order will be entered dismissing the complaint.

16 I. C. C. Rep.

No. 1907.
OTIS ELEVATOR COMPANY
v.
CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL.

No. 1908.

SAME

v.

SAME.

Submitted April 28, 1909. Decided June 21, 1909.

Reparation awarded for overcharges exacted on shipments of elevator guides from Chicago, Ill., to Portland, Oreg.

W. H. Brady for complainant.

Charles Donnelly for Northern Pacific Railway Company.

George W. Markham for Chicago Great Western Railway Company and its receivers.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

These cases involve claims for reparation on 2 carload shipments of tee rails, or elevator guides, shipped by complainant over the lines of the defendants from Chicago, Ill., to Portland, Oreg. The shipment covered by the complaint in No. 1907 moved on September 24, 1906, weighed 42,560 pounds, and was described and billed as "Iron elevator guides to be used in the construction of buildings." The shipment set forth in No. 1908 moved June 27, 1906, weighed 32,880 pounds, and was billed as "Steel tees to be used in construction of buildings." Complaints were filed December 1, 1908. The claim set forth in No. 1908 was presented to the Commission informally on April 23, 1908, but, so far as our records show, the claim in No. 1907 was not presented to the Commission until the filing of formal complaint. The freight charges in this case were paid October 9,

1906. The defendant, Chicago Great Western Railway Company, pleads the statute of limitations against this claim. Inasmuch as the claim was not filed within the two-year period provided by the act, the plea must be sustained and the case dismissed. We shall confine our inquiry to the case presented in No. 1908.

At destination the Northern Pacific Railway Company, the delivering carrier, collected freight charges at the rate of \$1.40 per 100 pounds, or in the total amount of \$595.84. Complainant contends that defendants' rate of 75 cents per 100 pounds on structural iron or steel, in carloads, between the points in question, should have been applied, and that the collection of the \$1.40 rate resulted in an overcharge. Reparation is asked in the amount of \$213.72, the difference between the charges assessed and the charges which would accrue under the 75-cent rate.

Transcontinental Freight Bureau tariff, I. C. C. No. 376, effective January 8, 1904, and in force on the date of the shipment, named a rate of \$1.40 per 100 pounds, in carloads, minimum weight 24,000 pounds, from Chicago, Ill., to Portland, Oreg., on machinery and machines, taking Class A rates as specified under the head of "machinery and machines," in current Western Classification. The rate collected on the shipment was assessed under the provisions of this tariff.

Supplement No. 29 to said tariff, effective April 10, 1906, and in effect on date of shipment, published a rate of 75 cents per 100 pounds, in carloads, minimum weight 30,000 pounds, from Chicago, Ill., to Portland, Oreg., on iron and steel articles described as follows:

Angle, channel, beams, columns, circular frames, girders, braces, rods (with head, eye, or screw threads); pulleys (not machinery); weights, chain, zees, tees, rails, joist hangers, base taps and bases, steel piling, tank and plate (No. 11 and heavier), punched or unpunched, bent or not bent; sidewalk and floor plates (without glass); rivets (not less than one-half inch in diameter); washers, nuts, and bolts (not including wagon, carriage, machine, and lag bolts).

Supplement No. 45 to the tariff above referred to, effective August 10, 1907, named a specific rate of 75 cents per 100 pounds from Chicago, Ill., to Portland, Oreg., on elevator guides, in carloads, minimum weight 30,000 pounds.

As already stated, this claim was presented to the Commission in the first instance informally, and at that time the general freight agent of the Northern Pacific expressed the opinion that the tee rails or elevator guides referred to were entitled to the rate named in supplement No. 29, and that the subsequent publication of supplement No. 45, specifically naming the rate on elevator guides, should be considered as a confirmation of the correct application of the 75-cent rate, rather than the publication of a new rate.

Subsequent to the filing of the answers herein, defendants' rates on structural iron and steel, including tee rails or elevator guides, were raised from 75 cents to 85 cents per 100 pounds, in carloads, minimum weight 30,000 pounds, from Chicago, Ill., to Portland, Oreg. Both defendants admit that 85 cents per 100 pounds would have been a reasonable rate to apply to the shipment in question, and the Northern Pacific Railway Company expresses a willingness to refund on the basis of the 75-cent rate, if the Commission should hold that tariffs in force at the time of shipment in fact made the 75-cent rate applicable.

It will be noticed that supplement No. 29 covers steel or iron tees and steel or iron rails. The complaint alleges that the articles shipped were tee rails, describing them as elevator guides. As before observed, supplement No. 45 named a specific rate of 75 cents on elevator guides, but since that time elevator guides have been included in the tariffs of defendants with iron and steel articles. The fact that the shipment actually consisted of iron or steel tee rails is not disputed. We are therefore of the opinion that the tariff of the defendants, in effect on the date of shipment, made the 75-cent rate lawfully applicable thereto, and that complainant was subjected to an overcharge of 65 cents per 100 pounds. Reparation will be awarded in the amount of \$213.72, with interest from the date of payment of freight charges.

16 I. C. C. Rep.

No. 2057.

GREAT WESTERN OIL COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY.

Submitted May 21, 1909. Decided June 24, 1909.

Higher classification of and minimum charges upon empty oil barrels from points in New Mexico to El Paso, Tex., than from same points to Albuquerque found to be unreasonable. Reparation awarded.

Rufus Daniel for complainant.

A. A. Hurd for defendant.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

Between September 14, 1906, and November 27, 1907, complainant made 51 separate shipments of empty oil barrels, set forth in detail in the expense bills in this record, from Selden, San Marcial, San Antonio, Albuquerque, Socorro, Mesquite, Messilla Park, Rincon, and Lake Valley, all in the territory of New Mexico, to El Paso, Tex., 9 of which shipments were subsequent to October 26, 1907. On those that moved prior to the date last named it was charged fourth class rates, with a minimum of 100 pounds at second class; no charge less than 25 cents. On those moving subsequently it was charged one-half of fourth class, with a minimum of 100 pounds at third class; no charge less than 25 cents.

Complainant alleges that the rates charged and collected were unreasonable and unjust, and demands reparation in the sum of \$43.65, being, as it alleges, the difference between the amounts actually collected and what would have been collected had the rates been one-half of fourth class, with a minimum charge of 25 cents. This latter classification, complainant alleges, would be reasonable for the service, and the Commission is asked to enter an order to that effect, both as to these past shipments and for the future.

An examination of the tariffs shows that at the time these shipments moved defendant had in effect rates on empty oil barrels into Santa Fe, Albuquerque, and other stations on its line of one-half of fourth class, with a minimum charge of 25 cents per barrel.

In Official Classification territory the rate on empty oil barrels is 15 per cent less than second class, with a minimum of 100 pounds at first class; no charge less than 25 cents.

In Southern Classification territory the rate is sixth class, with a minimum of 100 pounds; no charge less than 25 cents.

Western Classification names fourth class on empty barrels, and the tariffs of some of the carriers provide a minimum of 100 pounds at second class; no charge less than 25 cents.

From the above it would seem that there was and is a great diversity in the rule, both as to the rate and the minimum on empty barrels. Complainant was charged fourth class, with a minimum of 100 pounds at second class, no charge less than 25 cents; while there was in effect between New Mexico points a rule of one-half of fourth class, with a minimum charge of 25 cents per barrel. Under these circumstances, and it appearing that complainant and other dealers in oil in New Mexico sold in the same general territory, we are of opinion that complainant is entitled to reparation in the sum of \$36.12, the difference between the amounts charged and collected and what would have been charged had the rates applied been one-half of fourth class, with a minimum charge of 25 cents per barrel, with interest.

In regard to the rate for the future, we find that supplement No. 4 to tariff A., T. & S. F., I. C. C. No. 4475, effective November 28, 1908, provides rates on empty oil barrels of one-half of fourth class, with a minimum charge of 25 cents per barrel, applying between various New Mexico points, but not to El Paso. This provision was in effect at the time these shipments moved, as per tariff A., T. & S. F., I. C. C. No. 2662, effective April 15, 1904. Prior to November 28, 1908, one or two changes in the minimum were made, applying for periods not exceeding three months, but finally the supplement of November 28, 1908, fixed the rates at one-half of fourth class, minimum charge 25 cents per barrel.

It appears that it is the general rule to have class rates, subject to a minimum charge of not less than 25 cents, on empty oil barrels, but the rule applied in the territory involved in this controversy imposes upon the El Paso dealer higher charges than are imposed by defendant upon competing dealers also served by it. This is unduly discriminatory against complainant. We are of the opinion that El Paso should be granted the same basis of rates upon empty oil barrels that is accorded to competing places in that locality, and we therefore find that defendant should establish and for a period of two years maintain classification of and minimum charges on empty oil barrels from points in New Mexico to El Paso, Tex., not higher than those contemporaneously in force from the same points to Albuquerque, N. Mex.

An order will be entered in accordance with these views.

No. 1797.

DELRAY SALT COMPANY

v.

CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY
COMPANY ET AL.

Submitted April 8, 1909. Decided June 21, 1909.

The complaint was against the cancellation of through routes and joint rates on salt from Washburn, Wis., to points westward on defendants' lines via Minnesota Transfer, and increase caused by the application of the separately established rates. Restoration of the through routes and joint rates was asked for; *Held*, That there is a reasonable through route in existence and that the increase in the rates is unreasonable and discriminatory.

Moore & Moore for complainant.

George C. Conn for defendants.

REPORT OF THE COMMISSION.

COCKRELL, Commissioner:

The petition, filed October 14, 1908, alleges the cancellation by defendants of certain through routes and joint rates on salt from Washburn, Wis., to points westward on their lines via Minnesota Transfer. Such cancellation complainant alleges to have been unjust, unreasonable, discriminatory, unduly preferential and prejudicial, and otherwise unlawful, while the rates formerly in effect are said to have been reasonable and just. The prayer is for an order directing the defendants to cease and desist from such violation of the act to regulate commerce and to reestablish through routes and joint rates not exceeding the rates formerly in effect.

The defendant, the Chicago, St. Paul, Minneapolis & Omaha Railway Company, hereinafter called the Omaha Company, in its separate answer practically admits the statements in the petition and alleges that the tariff previously in force was published upon an arrangement with its codefendant and was canceled at such codefendant's request.

The defendant, the Minneapolis, St. Paul & Sault Ste. Marie Railway, hereinafter called the Soo Company, in its separate answer, while admitting practically all other averments in the petition, denies that the former rates were reasonable or that their cancellation was unjust, unreasonable, or discriminatory.

The case was heard February 10, 1909.

The facts are: The complainant, whose headquarters are at Detroit, Mich., is a duly incorporated company engaged in handling salt. In November, 1907, it acquired property at Washburn, Wis., and in the spring of 1908, constructed wharves there for distribution of salt. Considerable money was expended in the purchase of the property and in the construction work, as well as in the building up of its trade. Its first cargo was received in May, 1908, and about 200 carloads of salt were distributed during that season. When it acquired its property and constructed its wharves, through routes and joint rates were in effect from Washburn, the tariffs providing such routes and rates being as follows:

Joint through tariff of the defendants, I. C. C. No. 3044, effective February 14, 1907, establishing through routes and joint rates on cement, C. L., from Mankato, Minn., on the line of the Omaha Company to stations on the line of the Soo Company, named therein, being practically to all stations west of Glenwood, Minn. Supplement No. 1 to said tariff, effective July 7, 1907, made additions thereto, as follows:

1. The rates named in the tariff hereby amended from Mankato to stations Glenwood, Minn., and west, will also apply from Duluth, Minn., Superior, Itasca, Ashland, Washburn, or Bayfield, Wis., shipments to be waybilled through Minnesota Transfer.

2. The rates provided for on cement, C. L., will also apply on cement, lime, plaster, salt, stucco, etc., straight or mixed, C. L.—

thus establishing the same through routes and joint rates on salt from and to the points named as applied on cement. Supplement No. 7 to this tariff, effective November 22, 1908, suspended prior supplements and used these words:

The rates named in the tariff hereby amended, from Mankato, Minn., to stations, Glenwood, Minn., and west, will also apply from Duluth, Minn., Superior and Itasca, Wis.; shipments to be waybilled through via Minnesota Transfer—

thereby eliminating Washburn, Ashland, and Bayfield from its operation, but leaving the same rates in force from the other points of origin and not increasing any of the rates. This tariff, as amended by supplement No. 7, is still in force.

Defendants' joint tariff, I. C. C. No. 3296, effective May 10, 1908, on salt, C. L., established joint rates from Washburn to points named therein in Minnesota, North and South Dakota, including 15 points east of Glenwood, and then named the same rates and the same sta-

tions, Glenwood and west, as are named in supplement No. 1 to said I. C. C. No. 3044. This tariff, I. C. C. 3296, was canceled by supplement No. 3, effective September 17, 1908, in these words:

Cancellation notice: Refer to above-described tariff and cancel same, leaving no through rates in effect.

These are the through route and joint rate tariffs that were in effect when complainant acquired the property at Washburn, erected its wharves, and made the expenditures and shipments as stated, and upon which the complainant relied. Both tariffs carried the same rates on salt, which was 12.8 cents to Glenwood station, with increasing rates to points beyond. Were these joint rates reasonable and compensatory?

At the hearing the representative of the defendants, in answer to the inquiry—

What have you to say as to the reasonableness of the rates which were in effect from Washburn to these points on your line prior to the cancellation? As a whole, were they reasonable and compensatory in your opinion?

replied: .

I do not see how I can say anything else; the same rates are in effect to-day.

The rates were, therefore, reasonable and compensatory. Why were they canceled?

The Omaha Company, in its separate answer, says it was done at the request of its codefendant. The Soo Line at the hearing, in answer to the inquiry—

I understand the objection of your company to making through routes and joint rates from points on other lines is that you originate like traffic at points on your own line.

replied:

That is the objection, exactly.

There is now no through route and joint rate in effect from Washburn over the Omaha Line to points on the Soo Line. The existing rates on salt are as follows:

Omaha Company's I. C. C. 3413, local tariff, from Washburn, Ashland, Bayfield, Duluth, etc., to Minnesota Transfer, effective October 4, 1908, establishes a 5-cent rate per 100 pounds.

The Soo Company's local tariff I. C. C. 1892, effective February 2, 1907, from Gladstone or Manistique on Lake Michigan to Minnesota Transfer and intermediate points, establishes a blanket rate of 5 cents per 100 pounds.

Supplement No. 1 to through route and joint rate tariff I. C. C. 3044 names joint rates from Duluth, Superior, and Itasca to stations Glenwood, Minn., and west, 12.8 cents per 100 pounds. From this tariff Washburn was eliminated. The Soo Company's I. C. C. No. 2455, local tariff, effective April 26, 1909, from Gladstone Wharf, 16 I. C. C. Rep.

Mich., to stations west and northwest, establishes practically the same rates to the same stations as named in Supplement No. 1 to I. C. C. 3044, being 12.8 cents to Glenwood, with increasing rates beyond. The Soo Company's local freight tariff I. C. C. 2386, effective December 15, 1908, now in force, between Minnesota Transfer and stations west and northwest places salt in Class D, straight or mixed C. L., and then names the stations and rates between Minnesota Transfer and Glenwood and then from Glenwood and west to substantially the same stations as named in said Supplement No. 1, thus making a combination rate of 5 cents to Minnesota Transfer plus a specific rate to points westward, making the combined rate to Glenwood 13.9 cents. The distances to Minnesota Transfer are as follows:

From—	Miles.
Itasca.....	176
Superior.....	182
Duluth.....	186
Ashland.....	193
Washburn.....	198
Bayfield.....	210

The distance to the same point, Minnesota Transfer, is—

From—	
Manistique.....	396
Gladstone or Gladstone Wharf.....	352

The through rate over the Soo Line from Gladstone Wharf to Glenwood is 12.8 cents, and to other points beyond, the same as named in the canceled tariffs. The joint through rate now in effect from Duluth, Superior, and Itasca to Glenwood is 12.8 cents, with a gradual increase beyond. From this last tariff Washburn was withdrawn. The existing through transportation rate from Washburn to Glenwood made by the combination of the separately established rates, 5 cents from Washburn to Minnesota Transfer and 8.9 cents thence to Glenwood, is 13.9 cents, an increase of 1.1 cents, with a gradual increase to points beyond. The increases are all in the rates over the Soo Line and range from 1 to 5 cents per 100 pounds. The complainant's manager testified that the increase in the rates from Minnesota Transfer to points on the Soo Line was practically 5 cents per 100 pounds, or 15 cents per barrel of 300 pounds, and is practically prohibitory; that the present selling price of No. 1 medium-grade salt is 85 cents per barrel f. o. b. Washburn; and that in 1907 it was as low as 70 cents per barrel. When salt is tendered for shipment from Washburn to destination points on the Soo Line it moves through Minnesota Transfer without any further handling in any way by the consignor or consignee.

Our conclusions are that although the defendants have canceled the through joint rate from Washburn to points on the Soo Line and refuse to reestablish the same, they have filed, printed, and kept open to the public the separately established rates, fares, and charges applied to through transportation; that the rates charged for such through transportation are unjust and unreasonable to the extent that they are in excess of the rates that were charged under the through routes and joint rates formerly in effect; that the present rates unjustly discriminate against complainant by causing it to pay a greater amount for transporting salt from Washburn than is paid by other shippers for transporting salt from Duluth under substantially similar circumstances and conditions; that they give an undue and unreasonable preference or advantage to shippers of salt from Duluth and to the locality Duluth from Washburn, and subject the complainant, its salt, and Washburn to an undue and unreasonable prejudice or disadvantage. The reason, in fact the only reason, given by the Soo Line for its cancellation of the joint rates was that it was not willing to divide with the other defendants the revenue on traffic originating at Washburn, that the Soo Company could originate at Duluth, although it admitted that such canceled rates were reasonable and compensatory. This reason is wholly untenable and is in conflict with the interstate commerce act and the decisions of this Commission. See *Cardiff Coal Co. v. C., M. & St. P. Ry. Co.*, 13 I. C. C. Rep., 460, and *Standard Lime & Stone Co. v. Cumberland Valley R. R. Co.*, 15 I. C. C. Rep., 620.

The defendants will be given until August 2, 1909, to adjust their tariffs in accordance with the views herein expressed, and if at the expiration of that period they fail in this an order will then be issued.

16 I. C. C. Rep.

No. 1473.

HITCHMAN COAL & COKE COMPANY

v.

BALTIMORE & OHIO RAILROAD COMPANY ET AL.

Submitted December 11, 1908. Decided June 22, 1909.

1. Coal mines in Ohio, West Virginia, and Pennsylvania are, for rate-making purposes, arranged in groups. The Ohio River is, and for a long time has been, the boundary line between certain of these groups lying east and west thereof. Complainant's mine is on the east bank of the Ohio River. The rates for transportation of its product are higher to points west of the Ohio River than from the mines on the west bank of that river, and are lower to points east of the Ohio River than from the mines on the west bank of the river.
2. The custom has been somewhat general in years gone by for carriers to accord to each other preferential rates lower than were charged for the same service to the shipping public. There is, however, no warrant in the common law for the theory that a carrier as a shipper over the lines of another carrier may enjoy or be given a preferred status. There is no intimation in the act to regulate commerce that a carrier as a shipper has or may be given a status that is different from or more advantageous than that given to all other shippers. The practice can not be upheld without removing the very corner stone of the act, which seeks to abolish and prevent unjust and undue discrimination and preference. The Commission adheres to the view that it is the law that a carrier as a shipper over the lines of another carrier may not lawfully be given any preference in the application of tariff rates on interstate shipments; in other words, that one carrier shipping its fuel, material, or other supplies over the lines of another carrier must pay the legal tariff rates applicable to the same commodities shipped between the same points by an individual. If carriers insist upon making or maintaining such preferential rates they may confidently expect that such voluntary action on their part will be accepted and taken as evidence of the unreasonableness of higher rates which they may undertake to enforce against other shippers.
3. Complainant alleges that this arrangement is unreasonable and unjust to it, and prays that it be included in the group with the mines on the west side of the river; *Held*, That the conditions are not the same on both sides of the river, and that no showing is made which would warrant compulsory change in the grouping as prayed for, and which would in all probability involve all the rate adjustments from the bituminous coal fields of the states of Ohio, Pennsylvania, and West Virginia. Complaint dismissed.

William A. Glasgow and George R. E. Gilchrist for complainant.

W. Irvine Cross for Baltimore & Ohio Railroad Company.

16 I. C. C. Rep.

W. M. Duncan for Wheeling & Lake Erie Railroad Company and Pennsylvania lines west of Pittsburg.

M. F. Watts for St. Louis Merchants' Bridge Terminal Railway Company, Terminal Railroad Association of St. Louis, Wiggins Ferry Company, and Interstate Car Transfer Company.

F. J. Jerome for Lake Shore & Michigan Southern Railway Company; Cleveland, Cincinnati, Chicago & St. Louis Railway Company; Chicago & Eastern Illinois Railroad Company; Detroit, Toledo & Milwaukee Railway Company; Lake Erie & Western Railroad Company; Michigan Central Railroad Company; Northern Ohio Railroad Company, and New York Central & Hudson River Railroad Company.

REPORT OF THE COMMISSION.

CLARK, Commissioner.

Complainant corporation is engaged in mining, selling, and shipping bituminous coal, with its general offices at Wheeling, W. Va., and its mines at Benwood, W. Va. The corporate limits of Benwood adjoin those of Wheeling on the south.

Complainant owns approximately 5,000 acres of what is known as Pittsburg, or No. 8 seam, coal lands, adjacent to the right of way of the Baltimore & Ohio Railroad in Benwood. It commenced the operation of this property in 1902, and the mine opening and its tipples and trestles are within the yards of said railroad at that place. Adjoining the Hitchman property on the south are about 1,200 acres of similar coal lands belonging to the Glendale Mining Company, the capital stock of which is owned and controlled by stockholders in the complainant company, having been purchased by them about two years ago. Part of the property owned by the latter company projects into the holdings of the complainant, and it also has an outlet on the Ohio River, and for these reasons, it is claimed, the stockholders of complainant made the purchase. The Glendale mine, however, was not being operated at the time of the hearing in this case.

Benwood is included in the Baltimore & Ohio Railroad's Wheeling terminals and is within the Wheeling switching district. The Baltimore & Ohio Railroad is the only carrier reaching or serving the mines of complainant. Wheeling, Benwood, and Moundsville are located on the east bank of the Ohio River, and the opening of complainant's mine is but a short distance from the river, the property between being owned by the Baltimore & Ohio Railroad Company. On the west bank of the Ohio River, almost directly opposite Benwood, is Bellaire, Ohio, at which point are several bituminous coal mines which produce the same kind and character of coal as that produced

by complainant's mine. Commencing with Bellaire and extending north through West Wheeling, Bridgeport, Martins Ferry, and Rush Run, Ohio, the mines on the west of the Ohio River are included within what is known as the eastern Ohio district, and for the purposes of rate making all mines in that district take the same rate to any given territory.

This district extends westward from the river into Ohio for approximately 25 miles. Complainant's mine and the nearest mine in the eastern Ohio district at Bellaire, in a direct line, are about one-third of a mile apart, but by rail are $1\frac{1}{2}$ miles from each other. The Baltimore & Ohio Railroad serves mines at Bellaire and various other mines in the eastern Ohio district. Said carrier maintains a bridge across the Ohio River about one-third of a mile north of complainant's property, and all shipments from complainant's mine to the west are carried across this bridge.

Complainant's mine, for the purposes of rate making, is included in what is known as the Moundsville district, on the Baltimore & Ohio Railroad, which extends from Elm Grove, a point a little north and about 5 miles east of Wheeling, south through Wheeling and Benwood to Moundsville, taking in a territory approximately 12 miles long. At present there are only 7 mines located in this district. The nearest operated coal field on the east and south served by the Baltimore & Ohio Railroad is the Fairmont district, the most westerly mine in that district being approximately 56 miles from Moundsville. While it is claimed that, geologically, the Pittsburg seam of coal extends to the Fairmont district, it appears that the quality of coal produced in the Fairmont district varies materially from that mined in the Moundsville and eastern Ohio districts. The Fairmont coal is largely a thick vein, which is mined at less expense than the Moundsville or eastern Ohio district coals. The Fairmont product is a gas and coking coal. The Moundsville and eastern Ohio district coals are used only for fuel, having such high percentages of sulphur that they can not be used for gas and coking purposes. For fuel purposes, however, these coals are equal to the Fairmont product.

The nearest coal district on the north is classed as Pittsburg No. 8 district, and the nearest mine therein is approximately 39 miles north of Elm Grove. Between Elm Grove and the southern line of said Pittsburg district there are no developed coal fields, the veins running at such depth in that territory that the field is not yet ready for commercial exploitation. This is also true of the territory between Moundsville and the westerly mine of the Fairmont region. In each of these unworked territories, however, some of the lands have been purchased by coal operators, but it is claimed that the added cost of operation that would be incurred by mining at the depths required

would prevent such coal from being produced commercially at the present time.

Complainant is practically the only producer of commercial coal in the Moundsville district. The other mines are largely owned by manufacturing institutions, and their output is used in the operation of those industries. Complainant's output is greater than the combined output of the other mines in that district. The total output of all for the year 1907 was 413,000 tons.

The rates on coal from the Moundsville district to eastern points are the same as from the Fairmont district. The rates from the Fairmont district to the west are the same as from the Moundsville district, except on Lake shipments, and as to these the differential in favor of the Moundsville district is 8½ cents per ton. From the Moundsville district to Cleveland, Lorain, Sandusky, and Toledo the rates on commercial coal are \$1, \$1.15, \$1.25, and \$1.25 per ton, respectively; when destined for fuel cargo the rate to Cleveland, Lorain, and Sandusky is 88 cents per ton f. o. b. dock, and when destined for vessel fuel the rate to the three points named is 98 cents per ton f. o. b. dock.

The rate to Cleveland from the Pittsburg district mines lying next north of the Moundsville district and east of the Ohio River is, via the Pennsylvania lines, which do not reach the Moundsville district, 10 cents per ton lower than from the Moundsville district, and is the same as from the eastern Ohio district. This results from the individual action of the Pennsylvania Lines, and the rates so established by that line are not met by or applicable via the Baltimore & Ohio line. Following the establishment of this rate of 90 cents from the Pittsburg district to Cleveland, defendant, the Baltimore & Ohio Railroad, reduced its rate from the Moundsville district to Cleveland to \$1, but complainant alleges that as the docks at Cleveland over which its coal for Lake trade would have to be shipped are controlled by the Pittsburg Coal Company, a competitor of complainant, the reduced rate to Cleveland alone was useless to complainant so far as Lake shipments from Cleveland were concerned. Complainant's continued efforts to have the reduced rates apply to Lorain and to Sandusky resulted in the establishment by defendant, the Baltimore & Ohio Railroad, of a rate to Lorain of 88 cents on coal for reshipment by Lake, but not for delivery at Lorain or at intermediate points.

A 5-cent wharfage or transfer charge is exacted on vessel cargo coal at Lorain and Sandusky, making the total rates from the Moundsville district on shipments of that character 93 cents per ton. On vessel fuel from Moundsville to the points named, the transfer or wharfage charge is 11 cents per ton, making the total charge from the Moundsville district \$1.09 per ton on shipments of that character. From

the eastern Ohio district to Cleveland and Lorain, the rates on commercial coal are 90 cents per ton, and are likewise the same f. o. b. vessel for vessel cargo. The 90-cent rate also applies to Lorain f. o. b. cars dock, when for vessel fuel, and to Sandusky the rate on vessel fuel from the eastern Ohio district is 95 cents per ton f. o. b. cars dock. From the eastern Ohio district to Sandusky and Toledo, the rate on commercial coal is \$1 per ton, but to Sandusky, for vessel cargo, the rate is 90 cents. On shipments from the eastern Ohio district to Lorain and Sandusky, for vessel fuel, a wharfage or transfer charge of 11 cents is charged, making the total cost on shipments of that character \$1.01 per ton to Lorain and \$1.06 to Sandusky. The differential in favor of the eastern Ohio district and against the Moundsville district is 3 cents per ton on vessel cargo shipments to Lorain and Sandusky, 3 cents on vessel fuel to Sandusky, and 8 cents on vessel fuel to Lorain. To all other points west and northwest the eastern Ohio district enjoys a differential of 25 cents per ton lower than the rates from the Moundsville district.

The defendants also have special rates which apply only to coal for railway fuel use. From Martins Ferry to Cleveland, Ohio, that rate is 65 cents per net ton when shipped over the Wheeling & Lake Erie Railroad and consigned to defendant the Cleveland, Cincinnati, Chicago & St. Louis Railroad Company. From Moundsville the rate on coal of this character is \$1 per net ton. Shipments from Martins Ferry, Ohio, over the Wheeling & Lake Erie Railroad to Toledo, and consigned for railway fuel use to any one of the defendants herein, would move under a rate of 72½ cents per net ton. From Moundsville the rate on similar shipments is \$1.25 per net ton.

Defendant the Baltimore & Ohio Railroad has the following rates on railroad fuel coal in carloads, when for use of steam railways, from mines in the eastern Ohio district to the points mentioned:

From Bellaire, Ohio, to Cleveland, 65 cents per net ton; to Sandusky, Ohio, 72½ cents per net ton. (Shipments of coal from the Moundsville district to the same points and for similar use, are charged \$1 and \$1.25 per ton, respectively.) From Bridgeport, Ohio, to Cleveland, 65 cents per net ton; to Lorain, 57½ cents per net ton; to Sandusky, 72½ cents per net ton. (From the Moundsville district the rates to the same points on the same kind of coal are \$1, \$1.15, and \$1.25 per net ton, respectively.)

The Baltimore & Ohio Railroad, in connection with the Cincinnati, Hamilton & Dayton Railway, the Toledo, St. Louis & Western Railway, the Hocking Valley Railroad, the Wheeling & Lake Erie Railroad, the Kanawha & Michigan Railway, and the Lake Shore & Michigan Southern Railway, charges 72½ cents per net ton for

railway fuel coal from Bridgeport or Bellaire, Ohio, to Toledo, Hamler, or Sherwood, Ohio. The defendants charge complainant \$1.25 per net ton on similar shipments to Toledo, and \$1.35 and \$1.60 per net ton to Hamler and Sherwood, respectively.

The Baltimore & Ohio Railroad also has, in connection with the Cincinnati, Hamilton & Dayton Railway (B. & O. Tariff, Coal and Coke Series, I. C. C. No. 530, effective May 28, 1909), a rate on coal from various West Virginia districts, including Moundsville, to Toledo, Ohio, via Deshler, of 97½ cents per ton. This tariff provides:

The rate named applies only on coal for use of steam railroads and will apply only to and from points specified herein.

These rates are voluntarily made and the traffic thereunder moves through or from the Moundsville district and over the Baltimore & Ohio Company's bridge, which connects the West Virginia and Ohio fields.

The custom has been somewhat general in years gone by for carriers to accord to each other preferential rates lower than were charged for the same service to the shipping public. There is, however, no warrant in the common law for the theory that a carrier as a shipper over the lines of another carrier may enjoy or be given a preferred status. There is no intimation in the act to regulate commerce that a carrier as a shipper has or may be given a status that is different from or more advantageous than that given to all other shippers. It has been suggested in justification of preferential rates on railway fuel coal that that product affords a large tonnage for the carrier that transports the coal; that it is in a sense a reciprocal arrangement; and that the shipper carrier thereby secures its fuel at a lower cost. Neither of these suggestions is persuasive. The practice can not be upheld without removing the very corner stone of the act, which seeks to abolish and prevent unjust and undue discriminations and preferences. If a carrier may have lower transportation rates than other shippers just because it tenders a large tonnage, why may not the mine, mill, or factory that offers a large tonnage have lower rates than the mine, mill, or factory that offers a smaller tonnage? How can a carrier give such preferential rates to another carrier without unjustly discriminating in favor of some and against others of the mines or localities that it serves? Does it not necessarily follow that as a result of such rates one mine that has a contract for such fuel supply must secure an undue advantage over another mine in the same locality that has no such contract?

The reciprocity idea promises returns that are extremely remote and of decidedly uncertain value. It is the same idea that was advanced in support of the practice of exchanging transportation

of persons for newspaper advertising, and upon which the United States circuit court said:

It is essential to the spirit of the statute that the value of transportation be fixed and certain. In no other way can it be held to be exactly the same to all. If one person may purchase it with advertising, another with labor, and another with produce, the value of which is a matter of agreement between the parties, how can it be said the schedule rate is always maintained? Would not the rate rest in the whim of the carrier? Such is not the intent of the law. To say to one man, "You must pay cash," and to his competitor, "You may pay in service or merchandise at prices we may agree on," be it more or less than the market prices, would seem clearly to constitute such a difference in transportation as is condemned by the act. *United States v. C., I. & L. Ry. Co.*, 163 Fed Rep., 114 (118).

There is no valid reason why the earnings of one carrier should be sacrificed or reduced in order that another carrier may secure its fuel at less cost to it. There is apparently no room for any conclusion other than that heretofore officially expressed by the Commission, that a carrier as a shipper over the lines of another carrier can not lawfully be given any preference in the application of tariff rates on interstate shipments; in other words, that one carrier shipping its fuel, material, or other supplies over the lines of another carrier must pay the legal tariff rates applicable to the same commodities shipped between the same points by an individual. The Commission adheres to the view that that is the law. It has so far been thought best to afford opportunity for withdrawal of such preferential rates rather than to consider them a measure of the reasonableness of rates for all shippers. If, however, carriers insist upon making or maintaining such preferential rates they may confidently expect that such voluntary action on their part will be accepted and taken in any further proceedings in this or in any similar case as evidence of the unreasonableness of higher rates which they may undertake to enforce against other shippers.

The complainant alleges that the rates hereinbefore set out are unjust and unreasonable and that they subject complainant to unjust discrimination. While the complaint assails the reasonableness of the rates in and of themselves, no testimony at the hearing was directed to that question, but all of the evidence offered was as to the propriety of grouping the Moundsville district, for the purposes of rate making, with the eastern Ohio district. At the argument complainant's counsel conceded that to be the only question involved in the case.

It will be seen that the complainant desires to have the eastern boundary of the eastern Ohio district extended to include the Moundsville district. For many years the dividing line between these districts has been the Ohio River, and complainant contends that while

the river may furnish a natural boundary line, yet it is in no sense a just one under the present circumstances and conditions. Complainant further disclaims any intention of being grouped with the eastern Ohio district as to the rates to the west, and still retain its grouping with the Fairmont district as to the rates to the east. It says that if the boundary line is changed and the Moundsville district is included within the eastern Ohio district, it is willing to surrender its grouping as to rates to the east, and is also willing that the carriers shall make local rates into Wheeling from the mines in the eastern Ohio district, the same as now apply from complainant's mines in the Moundsville district. It contends that on the north, between the Moundsville and Pittsburg No. 8 districts, there is a strip of undeveloped coal territory 39 miles wide, and that to the south and east there are 56 miles of undeveloped coal lands between the southeasterly boundary line of the Moundsville district and the westerly boundary line of the Fairmont district, and that the boundary line for the eastern Ohio district could be justly extended to the westerly limits of those undeveloped territories instead of stopping at the Ohio River.

It appears from the record that complainant's mine has been prosperous, but this is claimed to be due to careful and economical management of its affairs, as well as to the modern equipment of its mine. The fact, however, that it has been prosperous, although a matter to be considered, does not conclusively show that the rates are not discriminatory. From the time complainant commenced its operations and up to the time of the hearing it had very materially increased its output. The major portion of its coal, however, had been sold to the Baltimore & Ohio Railroad for fuel, which was delivered direct from complainant's trestle into defendant's engines. The main part of the remainder of complainant's output has been sold locally in Wheeling and Benwood to manufacturing plants located there; a small portion has been shipped east, the aggregate amount for three years being something like 10,000 tons, and its shipments to the west via the Lakes approximate 80,000 tons. These figures, however, cover a period of three years, including 1907.

The total volume of coal now produced by all mines in the Moundsville district is approximately 415,000 tons annually, and one of the reasons given by defendants' witnesses at the hearing for their objection to the extension of the eastern Ohio district to include the Moundsville district was that if the boundary line was so extended, carriers in the eastern Ohio district would immediately lower their rates from points therein, in an amount equal to the present differential. The coal and coke agent of the Baltimore & Ohio Railroad stated, however, that if only the Moundsville district was involved,

the extension of the boundary would not necessarily produce a reduction in the rates by other carriers. When it is taken into consideration that the mines in the eastern Ohio district, served by carriers other than the Baltimore & Ohio Railroad, produce and market several millions of tons of coal annually, there is scant ground for the belief that these carriers would reduce their rates on that large volume of coal in order to keep approximately 400,000 tons out of the same market. As before noted, the Moundsville district includes a field some five or more miles in width and about twelve miles long. Therefore the effect upon the coal markets and the general adjustment of rates can not be accurately estimated upon the basis of the present production. Especially favorable rates might, and probably would, greatly increase the output of the district, and therefore the potential product of this field must be kept in mind.

The defendants also contend that to extend the eastern Ohio district to include Moundsville would also require an extension to include the Fairmont, Pittsburg, Westmoreland, etc., districts, all of which lie east and north of Moundsville.

The system of rate making by joining various points into a given group, and establishing the same rate from each point in the group to any given destination, has long been followed by the carriers. This system has contributed largely to the development of the natural resources of the country. It has served to put various producers of a given product in the same territory on an equality as to products destined to any common point of consumption. This system could not exist if distance were made the primary factor. Necessarily a group territory must have certain and definite boundary lines, and when once they have been established their extension should not be forced unless such extension is clearly warranted by the facts and circumstances in each case presented.

As related to the grouping of coal-producing points, if the boundary line of a given group is to be extended upon the development of each piece of property, the extension thereof will only be limited by the extent of the coal deposit.

It is true that between Moundsville and Underwood there are 56 miles of still undeveloped territory. This territory, however, is all underlaid with coal, at depths which at this time may not invite commercial development; but the testimony is that with the increasing demand and the exhaustion of the present mines, this territory will necessarily be operated. The extension of the eastern Ohio district rate to the first mine opened in this undeveloped territory will manifestly carry it to the next, and so on until the entire territory is covered. This would reach the western mine in the Fairmont district, and the same process would again follow.

This, however, is not the only objection to the granting of the relief demanded. We find that the circumstances and conditions obtaining in the eastern Ohio district as a whole differ materially from those obtaining in the Moundsville district. Even when compared with the most easterly mine in the eastern Ohio district, known as the Schick mine, at Bellaire, Ohio, the circumstances and conditions obtaining in the Moundsville district are materially different. The distance is slightly greater; the cost and expense of maintaining a bridge over the Ohio River is involved; the Ohio River has been the boundary line for many years, and the mines were developed therein while said boundary was in existence. The Moundsville district was developed long after the establishment of said boundary line, and complainant entered that field knowing of the existence of the differential.

The differential against the Moundsville district to the west is offset by the differential in favor of said district on shipments to the east; but unfortunately coal from the Moundsville district is not wanted in the eastern market. This is a commercial condition which this Commission can not equalize.

Excepting the rates to Cleveland hereinbefore mentioned, rates from the Pittsburg district generally to the Lake ports and to markets in the west are higher than from the eastern Ohio district. The Ohio River, as a boundary line separating these districts, has been and is observed as to the Pittsburg district, as well as, and substantially the same as, to the Moundsville district. It seems apparent that if the Moundsville district were to be included with the eastern Ohio district, like action would, upon further complaint, have to be taken, or would necessarily follow as to the Pittsburg district, which is an immensely more extensive and important coal district, and that would involve all of the rate adjustments from the bituminous coal fields of the states of Ohio, Pennsylvania, and West Virginia.

Complainant is of course entitled to any market that it can reach on a just and reasonable rate. The carriers might, if they chose, establish the same rates from the Moundsville district as from the eastern Ohio district, and would not be obliged to give the same weight to every difference in circumstance and condition as between the two fields which this Commission must give when called upon to determine whether an alleged discrimination is or is not unjust or undue. It is altogether probable that changed commercial conditions, new or extended transportation lines, and new markets will have worked an entire change in the situation before the deep-lying beds of coal between the Moundsville district and the Fairmont district are exploited. The fact that points on the east bank and points on the west bank of the Ohio River have equal rates eastbound and

westbound on many commodities is not lost sight of, but the conditions under which those commodities are produced and the commercial conditions affecting them are not the same as the conditions which surround the production and transportation of these coals.

Giving full consideration to every fact and circumstance in this record, we are unable to find that complainant is unjustly or unduly discriminated against, or that the Commission could properly order the adjustment prayed for, and are therefore brought to the conclusion that the complaint must be dismissed.

An order will be entered accordingly.

16 I. C. C. Rep.

No. 1961.
C. L. HUTCHESON & COMPANY
v.
CENTRAL OF GEORGIA RAILWAY COMPANY.

Submitted April 28, 1909. Decided June 24, 1909.

The first shipments of canned peaches from a new point of production moved under class rates. The carrier thereafter established commodity rates from that point, which were adjusted with relation to other producing points similarly situated, and which were designed to provide for further movements. Reparation awarded upon the bases of the commodity rates thus established.

J. B. Sizer for complainants.

Ed. Baxter, Sidney F. Andrews, and Sloss D. Baxter for defendant.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

Complainants are in partnership, and during the month of July, 1908, shipped 3 carload lots and one less-than-carload lot of canned peaches from Martindale, Ga., to Chattanooga, Tenn. At the time of movement there were no commodity rates on canned goods in effect between the points named, and the defendant assessed and collected freight charges based upon the class rates legally in effect at that time, the fifth class rate, or 19 cents per 100 pounds, upon the carload lots, and the third class rate, or 26 cents per 100 pounds, upon the less-than-carload lot, receiving a total of \$310.75.

As soon as possible after the defendant learned that canned goods were moving from Martindale that station was included with other points of origin on its lines in a specific commodity tariff effective October 24, 1908, Central of Georgia canned goods tariff No. 2, I. C. C. No. 1453. This tariff provided rates not only to Chattanooga but to southeastern points, south Atlantic coast points, Ohio and Mississippi river crossings, Gulf ports, Mississippi and Tennessee junctions, and western points. In other words, Martindale was treated by the defendant on the same basis and given the same opportunity to find an outlet for its canned goods as other points similarly situated. Under the present tariff the rates to Chattanooga are 18 cents per 100

pounds on canned goods in carloads, minimum weight 30,000 pounds, and 24 cents per 100 pounds in less-than-carload lots. Thereafter this complaint was filed.

The complaint is of the unreasonable and excessive rates charged, and reparation is demanded on a basis of 13 cents per 100 pounds for carloads and 20 cents per 100 pounds for less than carloads, and various rates applying to and from points in the vicinity of Martindale and Chattanooga are urged as bases for comparison on which to determine what the reasonable rates should have been. Martindale is 34 miles from Chattanooga, and under the rates established by the railroad commission of Georgia the defendant would have been entitled to charge for a similar distance, wholly within that state, 15 cents per 100 pounds on canned goods in carloads and 19 cents per 100 pounds in less than carloads. The rates complained of, it should be noticed, were the class rates, and the commodity rates established by the carrier were not mentioned in the complaint; the rates with which comparison was sought were rates controlled by the local Georgia rates; and so far as the defendant's action in establishing commodity rates is concerned, it was based on the assumption that canned goods would actually move thereafter from Martindale.

The rates from Martindale are now adjusted with relation to the rates from other producing points similarly situated, and, while the Georgia rates are presumptively reasonable, the evidence is not persuasive that the present interstate rates are unjust or unreasonable. The defendant, by its answer, admitted that the former rates were excessive in and to the extent that they exceeded the present commodity rates, and we so find.

The total weight of the carload shipments was 151,125 pounds and of the less-than-carload lot 12,420 pounds. At the rates which we find would have been reasonable, 18 cents per 100 pounds in carloads and 24 cents per 100 pounds in less than carloads, the total charges should have been \$301.84. Under the class rates which were in effect at the time of movement the charges should have been \$319.43. The carrier, however, through mistake, collected only \$310.75, and the complainants can have reparation only for the difference between what they actually paid, \$310.75, and what we now find should have been assessed, or for the sum of \$8.91.

An order in accord herewith will be issued.

No. 2244.

WHEELER LUMBER, BRIDGE & SUPPLY COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
ET AL.

Submitted May 22, 1909. Decided June 24, 1909.

The route selected by the initial carrier for complainant's shipment of posts from Wittenberg, Wis., to Whittemore, Iowa, via Milwaukee, was the natural route for the traffic, and the initial carrier exercised due diligence in sending the shipment via that route.

Dale & Harvison for complainant.

S. A. Lynde for Chicago & North Western Railway Company.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

June 5, 1907, complainant tendered to the agent of the Chicago & North Western Railway at Wittenberg, Wis., a carload of posts, weight 30,000 pounds, for transportation to Whittemore, Iowa, without routing instructions. The agent routed the shipment via Milwaukee, over the Chicago, Milwaukee & St. Paul, and a charge of 26½ cents per 100 pounds was exacted, or a total of \$79.50. It is alleged by complainant that there was in effect at the same time over the Chicago & North Western from Wittenberg to Mason City, Iowa, a rate of 16 cents, and from Mason City to Whittemore a rate of 5.32 cents, making a total of 21.32 cents, or a charge, had the shipment moved by that route, of \$63.96. Reparation is asked in the sum of \$15.54.

The facts are not in dispute. It is admitted by the Chicago & North Western that it received the shipment at Wittenberg, and that its agent there routed it via Milwaukee, where it was transferred to the Chicago, Milwaukee & St. Paul. There was no joint through rate from Wittenberg to Whittemore by any route. The charge of the Chicago & North Western from Wittenberg to Milwaukee was 8½

cents and the charge of the Chicago, Milwaukee & St. Paul to Whittemore was 18 cents.

There are several routes over which the shipment might have been handled by the Chicago & North Western and routed by it. To each of these routes cheaper rates are applicable than that by which the shipment was routed. The following table shows some of the points and the rates applicable through which the shipment might have moved:

	Cents.
Wittenberg to Minneapolis.....	10
Minneapolis to Whittemore.....	13
Total charge.....	<u>23</u>
Wittenberg to Mankato, Minn.....	13
Mankato to Whittemore.....	10.8
Total charge.....	<u>23.8</u>
Wittenberg to Wausau, Wis.....	5.5
Wausau to Whittemore.....	17
Total charge.....	<u>22.5</u>
Wittenberg to Sheldon, Iowa.....	19
Sheldon to Whittemore.....	5.6
Total charge.....	<u>24.6</u>
Wittenberg to Oshkosh, Wis.....	6.5
Oshkosh to Whittemore.....	16.5
Total charge.....	<u>23</u>

It was stated by a witness for complainant that there was a rate from Wittenberg to Winona of 10 cents, and from Winona to Whittemore of 11.7 cents, making a total of 21.7 cents. The rate from Wittenberg to Winona of 10 cents can be checked from the tariffs on file, but the 11.7-cent rate we are unable to verify.

It was admitted that the Chicago & North Western has joint rates with the Chicago, St. Paul, Minneapolis & Omaha which reaches Minneapolis, Sheldon, and Mankato, and that the shipment could undoubtedly have been handled by the Chicago & North Western and routed differently by its agent, but neither one of the routes would have been the ordinary, natural, or reasonable route. It is further contended that at the time the shipment moved the reasonable and proper junction point for the transfer of the shipment from the Chicago & North Western to the Chicago, Milwaukee & St. Paul, on which line Whittemore is situated, was Milwaukee. It was the nearest and most convenient junction point. It is further contended that the agent at Wittenberg who received and routed the shipment did not have in his possession and could not reasonably

be expected to have all the tariffs of the connections of the Chicago & North Western, showing their separately established local rates.

The natural route for this traffic was from Wittenberg to Milwaukee via the Chicago & North Western, and from Milwaukee to Whittemore, Iowa, by the Chicago, Milwaukee & St. Paul. In our opinion the Chicago & North Western was in the exercise of due diligence in sending the shipment via this route. No duty rested upon that company to hunt up, with the aid of an Iowa distance tariff, some unnatural connection by which this traffic might reach its destination at a slightly lower transportation charge. This holding is not opposed to Rule 70, Tariff Circular No. 15-A, but is exactly in accord with the final paragraph of that ruling.

The complaint will be dismissed.

16 I. C. C. Rep.

No. 1932.

BEEKMAN LUMBER COMPANY

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY
ET AL.

Submitted May 10, 1909. Decided June 24, 1909.

Rates on ties that exceed the rates on lumber of the same character as the ties are unreasonable and excessive. Reparation awarded.

T. C. Skeen for complainant.

E. B. Peirce, F. C. Dumbeck, and W. F. Dickinson for Chicago, Rock Island & Pacific Railway Company and St. Louis & San Francisco Railroad Company.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

Complainant is a corporation engaged in the buying and selling of lumber. February 26, 1907, complainant shipped a car of gum timbers weighing 35,600 pounds from Fenter, Ark., consigned to itself at Woodruff, Mo. These timbers were of irregular lengths adapted for use as switch ties, and, in fact, were sold to the Chicago Great Western Railway Company for its use. At destination total charges of \$83.10 were collected from the complainant, upon what authority does not clearly appear, unless the figures were in error for a charge of 23 cents per 100 pounds made up of a combination of locals based upon Kansas City, or \$81.88 in all. There was at the time of shipment a through rate in effect on lumber, except yellow pine and woods of value, of 19 cents per 100 pounds applying from Fenter, Ark., to Woodruff, Mo., but the defendants declined to apply this rate because it was not specifically applicable to cross-ties or switch ties and demanded the rate in effect on ties to Kansas City plus the local beyond.

It is not necessary for us to go again into the question of the rates on ties. The position of this Commission is definite and plain that the rates on ties should not exceed the rates upon lumber of the class and description of wood of which the ties are made. The total sum collected of complainant, \$83.10, was unreasonable, excessive, and unjust in and to the extent that it exceeded a total charge of \$67.64, which would have resulted had the through lumber rate of 19 cents per 100 pounds been applied, and the complainant is entitled to reparation in the sum of \$15.46, with interest.

We further find that the rate on ties ought not to exceed, for the future, the rate on lumber contemporaneously charged by these defendants. An order will issue to that effect, and granting reparation.

No. 1925.
MASURITE EXPLOSIVE COMPANY
v.
NORFOLK & WESTERN RAILWAY COMPANY ET AL.

Submitted May 22, 1909. Decided June 24, 1909.

Joint through rates asked for on shipments of masurite from Sharon, Pa., to Wilcoe, W. Va., found to be already in effect. Complaint dismissed.

T. Ludlow Chrystie for complainant.

R. Walton Moore for Norfolk & Western Railway Company.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

The question raised in this case was whether the Commission in *Masurite Explosive Co. v. P. & L. E. R. R. Co.*, 13 I. C. C. Rep., 405, intended to establish joint through rates from and to the respective points on the lines of the defendant carriers at the time that order was made.

In order to test this question the complainant in its petition stated that on shipments of masurite from Sharon, Pa., to Wilcoe, W. Va., it would be compelled to pay the sum of the locals and asked this Commission to establish joint through rates between said points.

The tariffs on file with this Commission show, however, that there is to-day in effect a joint rate of 73 cents on carloads, 20,000 pounds minimum, and \$1.29 $\frac{3}{4}$ per 100 pounds on less than carloads, on masurite from Sharon, Pa., to Wilcoe, W. Va., via Pennsylvania Company and the Norfolk & Western Railway, and this rate was put into effect by supplement 41 of the Norfolk & Western tariff, I. C. C. No. 2600, in compliance with the order of the Commission in the above-named case.

Accordingly the complaint in this case should be and is dismissed.

16 I. C. C. Rep.

No. 1944.
SLIMMER & THOMAS
v.
PENNSYLVANIA COMPANY ET AL.

Submitted April 15, 1909. Decided June 24, 1909.

Complainants ordered cars of certain dimensions for shipments of cattle from South St. Paul, Minn., to Hammond, Ind. The initial carriers supplied cars of larger dimensions, but protected the minimum weights of the sizes ordered. At Hammond the cattle were rebilled to Philadelphia, Pa., on a separately established tariff, and payment of freight charges to Hammond was made to the western lines. The lines east of Hammond declined to protect the minimum weights, as the provisions of their tariffs had not been complied with. Upon complaint asking for reparation; *Held*, That under the circumstances the complaint should be dismissed. *Pacific Purchasing Co. v. C. & N. W. Ry. Co.*, 12 I. C. C. Rep., 549, distinguished.

H. Krasinsky for complainants.

C. B. Fernald for Pennsylvania Company, Pennsylvania Railroad Company, and Indiana Harbor Belt Railroad Company.

S. A. Lynde for Chicago & North Western Railroad Company.

Richard L. Kennedy for Chicago, St. Paul, Minneapolis & Omaha Railway Company.

REPORT OF THE COMMISSION.

PROUTY, *Commissioner*:

November 19, 1907, complainants ordered of the Chicago, St. Paul, Minneapolis & Omaha at South St. Paul, Minn., two 36-foot stock cars for shipment of 85 head of cattle billed from South St. Paul to Hammond, Ind. The carrier, for its convenience, furnished two 33-foot cars and one 36-foot car, in which the cattle were transported. November 25, 1907, complainants ordered of the Chicago, Burlington & Quincy, at South St. Paul, eight 36-foot stock cars for shipment of 225 head of cattle, billed from St. Paul to Hammond, Ind. The carrier, for its convenience, furnished seven 33-foot cars, two 44-foot cars, and one 36-foot car, in which the cattle were transported.

The carriers from St. Paul under a tariff rule providing therefor protected the minimum on the cars ordered. The shipments moved
16 I. C. C. Rep.

on the rate provided in the tariffs of these carriers from St. Paul to Hammond where the shipments were rebilled to Philadelphia, Pa. No complaint is made against the lines which transported the shipments from St. Paul to the delivery points of the Indiana Harbor Belt. The complaint is that the Indiana Harbor Belt and the Pennsylvania Company failed to protect the minimum on the number of cars ordered by the shipper at South St. Paul. The rate on cattle from Hammond, Ind., to Philadelphia, Pa., is 26 cents per 100 pounds. The shipments weighed at Hammond 184,000 pounds. Charges collected on the basis of 260,000 pounds, the minimum for 13 cars instead of 200,000 pounds, the minimum for 10 cars, resulting in an overcharge as alleged by complainants of \$156, for which reparation is asked. The tariff of the Pennsylvania provides a 20,000 pound minimum for shipments of carloads of cattle.

It appears from the record that shipments from South St. Paul were made to Hammond, Ind., on stock contracts which do not bear notations that a certain kind of car was ordered, and others, and a larger number was furnished. It is insisted by complainants that the waybills issued on these shipments at South St. Paul contained a notation that certain cars were ordered and others furnished. These waybills are not in the record and in our view of this matter they are not material.

The shipments over the North Western Railroad from South St. Paul were received by the Indiana Harbor Belt at Melrose Park, Ill., and from there taken by the Indiana Harbor Belt to Blue Island, Ill., where it has a feeding yard, and the cattle were unloaded, fed, watered, and cared for by complainants' representative stationed at that place for the purpose. They were reloaded into the same cars in which they were received and transported to Hammond, Ind., by the Indiana Harbor Belt. The cars shipped from St. Paul over the Burlington were received by the Indiana Harbor Belt at West Grossdale, Ill., and transported to Blue Island and there fed and watered by complainants' representative and reloaded by him into the cars in which they were received and transported to Hammond, Ind., by the Indiana Harbor Belt. Complainants made out bills of lading at South St. Paul for the reshipment of the cattle from Hammond to Philadelphia, mailed the same to their representative at Blue Island, who gave the billing instructions to a representative of the Indiana Harbor Belt at that point, who in turn gave them to the agent of the Indiana Harbor Belt at Hammond, who rebilled the shipments in accordance with instructions to Philadelphia. No charges followed shipment. Payment to the western lines was made by complainants at South St. Paul.

The Commission held in *Pacific Purchasing Co. v. C. & N. W. Ry. Co.*, 12 I. C. C. Rep., 549, that where three connecting roads

publish a joint tariff under which they hold themselves out to the public as prepared to transport commodities in carload lots of a certain minimum magnitude at a certain specified rate, such carriers are by their tariffs allowed to charge no more than the rate upon such carload, no matter what equipment they may provide for its transportation, except as the tariff in specific terms provides certain minimum weights for carloads in cars of certain lengths or capacities. Complainants rely on this case to sustain their contention.

It is to be observed, however, that the case turns upon the consideration that the carriers had provided a joint through rate. In the case under consideration there was no published joint through rate from South St. Paul to Philadelphia, and the cattle moved from South St. Paul to Hammond on the separately established tariffs of the western lines, and from Hammond to Philadelphia on a separately established tariff of the Pennsylvania. Under the circumstances shown the shipments from Hammond to Philadelphia were new shipments. There was no notation on the bill of lading prepared by the complainants in this case and presented to the agent of the Indiana Harbor Belt at Hammond, which specifically stated that other and more cars had been furnished by the St. Paul lines than had been ordered. The shipment from Hammond to Philadelphia must be considered by itself, and the duty apparently devolved upon the complainants to notify the Pennsylvania, which made the rate from Hammond to Philadelphia, that they required 10 cars of certain dimensions in which to make the shipment if they wished to secure the minimums which the tariffs of that carrier provide. The representative of complainants had charge of the cattle at Blue Island feeding yards, and under instructions from complainants reloaded them into the cars in which they were received without informing the carrier which was to transport them to Philadelphia that 10 cars had been ordered and 13 furnished. If the shipper had notified the Indiana Harbor Belt that he required 10 cars in which to make the shipments, no doubt that road would have in due course notified the Pennsylvania and the cars would have been furnished, and no overcharge as alleged would have occurred.

As we see this transaction, it is clearly one in which the shipper failed to properly notify the eastern carriers of the situation with respect to these shipments, and there was nothing that these carriers could do under the circumstances but to apply their regularly published tariffs. For the reasons given the complaint must be dismissed.

No. 1316.
COMMERCIAL CLUB OF HATTIESBURG
v.
ALABAMA GREAT SOUTHERN RAILROAD COMPANY ET AL.

Submitted April 9, 1909. Decided June 22, 1909.

1. This complaint attacks as unreasonable and unjustly discriminatory the general adjustment of rates to and from Hattiesburg, Miss., as compared with rates to and from New Orleans, La.; Mobile, Ala.; Gulfport, Natchez, Vicksburg, Jackson, and Meridian, Miss.
2. Defendants find no difficulty in defending the grouping of Vicksburg, Natchez, New Orleans, Gulfport, and Mobile, on the ground that the conditions at those places are similar and are dissimilar to those at other neighboring and intermediate points. Just to the west of Vicksburg are Shreveport, Alexandria, and Monroe in a well-established group, which this Commission has recently declined to order dissolution of. Just east in Alabama are other groups, established, maintained, and defended upon the same ground. And Jackson and Meridian are grouped, and that grouping is maintained and defended upon the same reasons and arguments. Of course, carriers may voluntarily do many things which they may not lawfully be compelled to do. Some of these defendants could, if they chose, add Hattiesburg to the Jackson-Meridian group, and the others could meet the competition thus created at Hattiesburg, and all of them could no doubt defend that action as strongly and logically as they now defend the Jackson-Meridian group. The Commission can not, however, find that, as a matter of law, Hattiesburg must be grouped with Jackson and Meridian. However strongly the Commission might feel inclined to relieve the conditions complained of, its actions must be within the provisions of the law and with due and proper regard for the rights of every affected interest.
3. As the Commission is unable to find discrimination that is unjust and that can be removed by any lawful, effective, and enforceable order, it follows that an order of dismissal without prejudice must be entered.

C. H. Alexander and T. M. Miller for complainant.

S. F. Andrews for defendants.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

The complaint in this case attacks as unreasonable and unjustly discriminatory the adjustment of rates generally from all directions to Hattiesburg, Miss., the alleged unreasonableness and discrimination resting substantially, if not entirely, in the relation of the

rates to Hattiesburg as compared with the rates to New Orleans, La., Mobile, Ala., and Gulfport, Natchez, Vicksburg, Jackson, and Meridian, Miss. The Commission is asked to fix just and reasonable rates to Hattiesburg and to order defendants to desist from charging higher rates on grain and grain products and packing-house products than they charge for transporting these commodities to Gulfport, Miss., or at least to Jackson and Meridian, Miss., and from charging higher class and commodity rates to Hattiesburg than to Meridian, Miss.

The situation at Hattiesburg is unique, and the accompanying sketch or map will assist in making it clear.

The New Orleans & Northeastern Railroad runs in a northeasterly direction from New Orleans through Hattiesburg to Meridian. The Alabama & Vicksburg Railway runs due west from Meridian through Jackson to Vicksburg, and, together with the Vicksburg, Shreveport & Pacific Railway, which runs from Vicksburg west to Shreveport, La., is under a common ownership, control and management with the New Orleans & Northeastern Railroad. It is 85 miles from Meridian to Hattiesburg and 96 miles from Meridian to Jackson.

The Mobile & Ohio Railroad runs in a southerly direction from St. Louis, Mo., through Meridian to Mobile, Ala. It is about 95 miles from Meridian to Mobile.

The Illinois Central Railroad runs in a southerly direction from St. Louis and Cairo through Jackson, Miss., to New Orleans.

The Gulf & Ship Island Railroad runs in a southeasterly direction from Jackson, Miss., through Hattiesburg to Gulfport, Miss., which is on the Gulf of Mexico. It is approximately 90 miles from Jackson to Hattiesburg and approximately 70 miles from Hattiesburg to Gulfport.

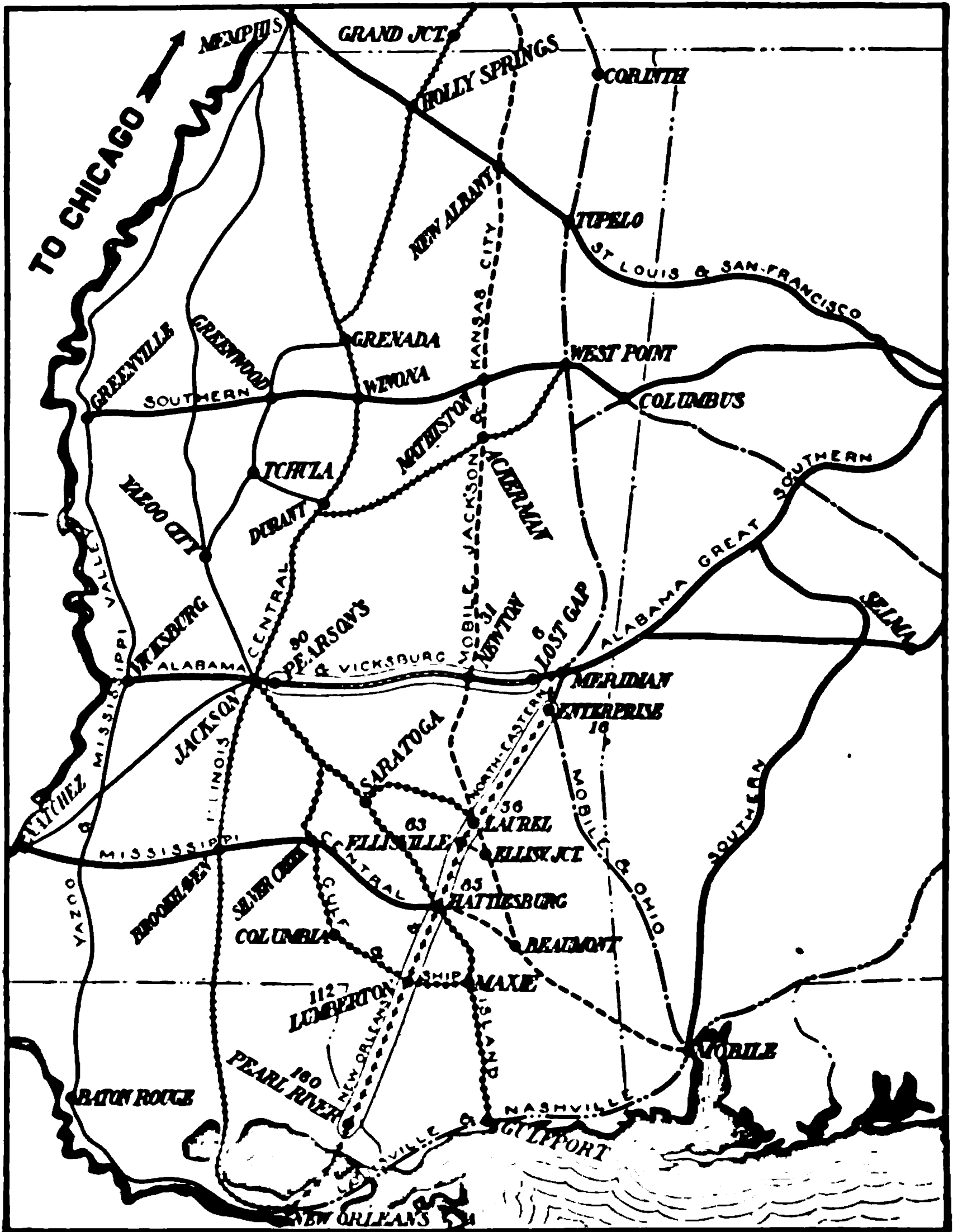
The Mobile, Jackson & Kansas City Railroad runs from Mobile in a northerly direction practically paralleling the Mobile & Ohio Railroad to Middleton, Tenn., with a branch from Beaumont, Miss., to Hattiesburg, 27 miles, making the distance from Mobile to Hattiesburg 95 miles.

The Mississippi Central Railroad runs from Hattiesburg west to Natchez, Miss., a distance of 149 miles. This line crosses the main line of the Illinois Central from Jackson to New Orleans at Brookhaven, Miss., 83 miles west of Hattiesburg.

The Alabama Great Southern Railroad runs northeasterly from Meridian, Miss., to Chattanooga, Tenn., where it connects with the Cincinnati, New Orleans & Texas Pacific Railway, which runs north to Cincinnati. These two lines are under common control and management, and, in conjunction with the New Orleans & Northeastern line from Meridian to New Orleans, operate solid through train service between Cincinnati and New Orleans

The Yazoo & Mississippi Valley Railway runs from Memphis along the Mississippi River through Vicksburg to New Orleans, and is owned and controlled by the Illinois Central Railroad.

The New Orleans & Northeastern Railroad, in conjunction with its connections from Cincinnati, participates in transportation of traffic



from Cincinnati and points basing thereon to New Orleans at lower rates than apply from same points of origin to Hattiesburg, although the traffic is hauled directly through Hattiesburg to New Orleans.

The Illinois Central, in conjunction with the Gulf & Ship Island, hauls traffic from St. Louis and points north thereof to Gulfport at

lower rates than apply from same points of origin to Hattiesburg, and this traffic is hauled directly through Hattiesburg.

The New Orleans & Northeastern and the Alabama & Vicksburg haul traffic from New Orleans to Meridian and to Jackson at lower rates than apply from New Orleans to Hattiesburg, and this traffic is hauled directly through Hattiesburg.

Hattiesburg therefore complains that traffic from the north and west is hauled through Hattiesburg to New Orleans, Gulfport, and Mobile at lower rates than apply at Hattiesburg, and that traffic through the Gulf ports of Mobile, Gulfport, and New Orleans is hauled north, northeast, and northwest through Hattiesburg at lower rates than apply at Hattiesburg. It complains that it is not given the benefit of its proximity either to the Gulf ports or to the Mississippi River landings, and that it is especially discriminated against in favor of Jackson, Meridian, and Gulfport.

In point of population, number and character of industries, volume of business, etc., Hattiesburg is substantially on a parity with Meridian and Jackson. It is located in an extensive and valuable lumber-producing territory, and since 1894 has grown from an unimportant local station to an important railroad center, at which extensive and important commercial industries are located and at and in the immediate vicinity of which a large and important tonnage of outbound freight originates.

Complainant alleges that no recognition of the growth and importance of Hattiesburg or of its proximity to the Gulf and to the Mississippi River has been accorded by the lines reaching Hattiesburg and by the carriers serving the territory in which Hattiesburg competes with other places which are accorded more favorable rates.

Complainant alleges that Gulfport has not now and never has had any line of water transportation to New Orleans and that no freight is moved on the Mississippi River and through the Gulf to Gulfport, but that defendant, Gulf & Ship Island Railroad, and its connections (principally the Illinois Central Railroad) have accorded Gulfport the same rates as apply at New Orleans and at Mobile. It appears that a close traffic alliance and agreement exists between the Gulf & Ship Island Railroad and the Illinois Central Railroad under which northbound shipments originated by the former move under joint arrangement over the lines of the latter and the Illinois Central joins in rates to Gulfport the same as those applied by other lines at Mobile and at New Orleans. Complainant alleges that there is no actual or substantial competition by water from the west to Gulfport.

The railroads leading to the Gulf ports when built were obliged to compete with the rates via the Mississippi River, and, for competitive reasons, the Mobile & Ohio and other lines established at Mobile the

same rates inbound and outbound that applied at New Orleans. The rates to and from New Orleans were established in competition with the steamboat rates on the Mississippi River, and, following the precedent already set by the steamboat lines, rates to Vicksburg and important landings between Vicksburg and New Orleans were the same as to New Orleans. Therefore the rail rates from the north are the same to Vicksburg and New Orleans and to important river landings intermediate to those points.

The question now arises, Is it unreasonable or unjustly discriminatory for the Gulf & Ship Island Railroad and its connections to establish and maintain at Gulfport the same rates that apply at Mobile and at New Orleans? Obviously the port of Gulfport cannot attract import or export or coastwise traffic except on equal terms with its neighbors, Mobile and New Orleans. New lines reaching the Gulf and establishing new ports thereon must of necessity compete with other lines and other ports already established.

Complainant calls attention to the fact that the Mississippi Central, in connection with the New Orleans & Northeastern, hauls freight from Natchez to New Orleans via Hattiesburg at the same rate that applies from Natchez to New Orleans via the Mississippi River, but on this, as on all business to and from the Gulf ports, there is the controlling competition of the Mississippi River and the Gulf.

The Mobile & Ohio Railroad, in connection with the Alabama & Vicksburg, hauls traffic from St. Louis through Meridian to Jackson at the same rate that the Mobile & Ohio charges to Meridian. The Alabama Great Southern and its northern connections and the Alabama & Vicksburg haul traffic from Cincinnati through Meridian to Jackson at the same rate that is charged to Meridian. The Illinois Central, in connection with the Alabama & Vicksburg, hauls traffic from St. Louis or Cairo through Jackson to Meridian at the same rate that is charged to Jackson. The rates to Meridian and to Jackson are lower than to Hattiesburg, although the distance to Jackson through Meridian is substantially the same as to Hattiesburg through Meridian, and the distance to Meridian through Jackson is substantially the same as to Hattiesburg through Jackson, and the Alabama & Vicksburg, which is the line between Jackson and Meridian, is to all intents and purposes identical with the New Orleans & Northeastern, the line from Meridian to Hattiesburg. The direct line from Jackson to Hattiesburg is the Gulf & Ship Island.

The crux of the question we are called upon to decide is whether or not these carriers or any of them unjustly discriminate against Hattiesburg and in favor of Jackson or Meridian.

Complainant shows that dealers in Hattiesburg are unable to compete in surrounding territory with dealers at Meridian, Gulfport, and Jackson, and shows that recently two grocery houses have removed from Hattiesburg—one to Gulfport and the other to New Orleans.

Complaint is made that the local rates of some of the defendants have been made on zone or group bases, but it appears that such rates so grouped are, when used as distributing rates, intrastate, and presumably are within the jurisdiction of the state and not of this Commission.

The attitude of the lines reaching Hattiesburg is, in substance, as follows:

Mr. Steele, general freight agent of the New Orleans & Northeastern and Alabama & Vicksburg roads, thinks that the contention of Hattiesburg is in general meritorious, and that in general Hattiesburg is entitled to equal rates with Meridian, with perhaps a slight differential over Meridian on traffic from the Central Freight Association territory. Vice-President and General Manager Smith, of the Mississippi Central, testified that he could not controvert either the statement of facts or conclusions of Mr. Steele. Mr. Emerson, who was the general freight agent of the Mississippi Central road at the time this complaint was filed, testified that the Mississippi Central then favored the petition. There is no showing that that position has changed. Mr. Steele stated that the position of the Gulf & Ship Island road is one of neutrality. No testimony was given on behalf of the Mobile, Jackson & Kansas City road, which apparently takes no active part in the controversy, but complainant alleges that this road is really favorable to its contention.

Numerous northern and eastern roads that were made defendants allege that they have no part in fixing these rates; that they are controlled by the southern lines. General Freight Agent Hattendorf, of the Illinois Central, testified that no one of the lines entering Hattiesburg, or all of them together, could establish the rates prayed for, but that if the Illinois Central should establish those rates they would at once be established by all of the other lines.

Much reference is made to an order of the Mississippi commission relative to grain rates from Vicksburg to Meridian, and it is assumed by some of the defendants that this is a proper measure of probable results from changes at Hattiesburg. Briefly stated, the facts, as we understand them, are that the Alabama & Vicksburg road established a so-called rebilling rate from Vicksburg to Meridian of 3½ cents per 100 pounds on grain, stated to be applicable only on grain coming to Vicksburg over the Vicksburg, Shreveport & Pacific road. It was found that grain was being forwarded from Vicksburg on this rebilling rate, regardless of its origin, and that the Vicksburg grain dealers

were thereby given an advantage over dealers at other points, which, in the view of the Mississippi commission, was unlawful. It thereupon ordered that this so-called rebilling rate should be open alike to all. The validity of this order was sustained by the Supreme Court of Mississippi and by the Supreme Court of the United States. See *Alabama & Vicksburg Ry. Co. v. Mississippi R. R. Commission*, 203 U. S., 496. This order of the Mississippi commission was made in November, 1903, and stood enjoined until decision was rendered by the Supreme Court of the United States in December, 1906. It therefore had no effect or influence whatever upon the general present adjustment of rates at Jackson, Meridian, and Hattiesburg, which were, so far as Jackson and Meridian are concerned, relatively the same for years before that time, and substantially so also so far as Hattiesburg is concerned.

Complainant argues that if the influence of the Mississippi River is controlling it is impossible to deny to Hattiesburg, as against Meridian, the benefit of its proximity. The distance by rail from Hattiesburg to Vicksburg is less than from Meridian to Vicksburg, and from Hattiesburg to Natchez practically the same as from Meridian to Vicksburg.

The relationship of rates at Jackson and Meridian is of long standing. Some differences of opinion and understanding with relation to their origin are expressed, but it is obvious that the Mobile & Ohio Railroad will maintain from the Gulf and from St. Louis to Meridian as low rates as the Illinois Central maintains to Jackson; and for the same reasons the Illinois Central will maintain at Jackson as favorable rates as the Mobile & Ohio maintains at Meridian. The rates of the Alabama Great Southern and its connections from Cincinnati and points basing thereon to Meridian must be made with relation to the rates from St. Louis to Meridian; and if the Cincinnati line and its connections are to participate in any traffic from Cincinnati to Jackson they must haul it to Jackson at the same rate they receive to Meridian.

The Mobile & Ohio making the rate from St. Louis to Meridian equal to the Illinois Central rate from St. Louis to Jackson, it follows that if the Illinois Central and its connection, the Alabama & Vicksburg, are to participate in any traffic to Meridian they must haul it to Meridian at the same rate they get to Jackson. Does the fact that the Alabama & Vicksburg, being in reality the same as the New Orleans & Northeastern, joins in the haul from St. Louis or Cincinnati through Meridian to Jackson at the same rate that applies to Meridian constitute an unjust discrimination against Hattiesburg? Does the fact that the Illinois Central, in conjunction with the Alabama & Vicksburg, hauls traffic from St. Louis through Jackson

to Meridian at the same rate that applies at Jackson, while refusing to join in like rates with the Gulf & Ship Island through Jackson to Hattiesburg, establish undue discrimination against Hattiesburg? Is there, in the light of the facts here shown, any obligation upon these defendants *as a matter of law* to give to Hattiesburg lower rates or rates that more nearly coincide with the rates accorded to the other places named? Is there here discrimination which the Commission can lay hold of and correct by a lawful, effective, and enforceable order?

Defendants' witness, General Freight Agent Hattendorf, of the Illinois Central, testified that that company opposed the adjustment sought at Hattiesburg because it would affect its rates to other points. On this subject he was asked:

Then the compelling effect of any reduction made at Hattiesburg is measured entirely by the amount of your interest and the volume of the traffic affected thereby?

To which he answered:

We might not feel, if the traffic did not justify it, that we ought to meet the competition. If we lost a great volume of traffic we would feel we had to do it. That is usually the situation under which we work.

It is strongly argued by defendants that to give Hattiesburg the same rates as Jackson and Meridian would compel like reduction in rates to numerous other places in the vicinity of Hattiesburg and Meridian. To this complainant forcefully replies that the lower rates to Jackson and Meridian have not had such compelling effect as to the other places, and that therefore bringing Hattiesburg into a group with Jackson and Meridian could not have such effect. Attention is also called to the fact that neither Meridian nor Jackson has expressed any opposition to the claims of Hattiesburg.

The Mississippi railroad commission has officially decided that the circumstances and conditions at Hattiesburg are substantially dissimilar to those at all other interior places in the state except Meridian and Jackson, and that Hattiesburg is entitled to be treated in rate construction as a competitive point and to be grouped or classed with Meridian and Jackson.

Defendants contend strongly that Meridian and Jackson are highly competitive points and that therefore the situation there is materially different from that at Hattiesburg. We pause here for a moment to discuss that point.

It is shown that Hattiesburg is in all commercial respects as important as either Meridian or Jackson and that it probably originates more outbound freight than either Meridian or Jackson. No line of railroad reaches both Meridian and Jackson except the Alabama & Vicksburg Railway, which, it is to be borne in mind, is identical with the New Orleans & Northeastern Railroad. Traffic

from St. Louis or the west to Meridian, other than that that comes through the Gulf ports, must come direct over the Mobile & Ohio or be hauled to Meridian by the Alabama & Vicksburg. Traffic to Jackson from St. Louis or the west which does not come through the Gulf ports must reach Jackson via the Illinois Central direct or via the Alabama & Vicksburg Railway. Meridian is the terminus of every line reaching there excepting the Mobile & Ohio. Apparently competition between Meridian and Jackson as distributing centers is no keener and no greater in volume than that between Meridian and Hattiesburg, or that between Jackson and Hattiesburg, and upon an equal adjustment of rates there is no reason to assume that the volume of traffic brought in and distributed from Hattiesburg would not equal that of either Meridian or Jackson.

The highly competitive conditions claimed to exist at Meridian and Jackson do not appear to be competition of carriers reaching a common point, but seem to be competition between the desire of the Illinois Central on the one hand and of the Mobile & Ohio on the other to see that Jackson and Meridian are given equal advantages with each other.

Defendants argue that river competition greatly diminishes as distance from the river increases, and, but for other circumstances, would be less controlling at Meridian than at Jackson. They argue that "this river competition never has been controlling as to Hattiesburg, and under present conditions can not be controlling." As has been noted, Hattiesburg is nearer to Vicksburg than is Meridian, and is as near to Natchez as Meridian is to Vicksburg. There appears to be no reason why the river competition should not reflect as far from Vicksburg or Natchez to Hattiesburg as to Meridian, except the fact that it has not been permitted to do so. Obviously, "under present conditions," the river competition can not be controlling at Hattiesburg; but there is great force in complainant's contention that Hattiesburg is much nearer each of the Gulf ports than is Meridian or Jackson, and that it is as near to the Mississippi River as is Meridian and has direct lines of railway from both Vicksburg and Natchez, while Meridian has a direct line only from Vicksburg.

Defendants argue that the competition at Meridian was created in "an era of unrestrained competition," that it resulted in an abnormal depression of rates at that point, and that Hattiesburg was not in existence until long after competition and strife between markets and carriers had established both Meridian and Jackson as base points. But does it necessarily follow that an adjustment created at such a time and under such conditions must be perpetuated regardless of the effect upon other places and the effect of the development of the country and construction of new railway lines and connections?

Defendants argue that it is easy to see that the reason that the rates from St. Louis are the same to Meridian and Jackson is because both the Illinois Central and the Mobile & Ohio reach St. Louis and are parallel with each other, and it has long been their fixed policy to maintain the same rates to opposite stations on their respective lines. We again come back to the fact, however, that Meridian and Jackson are 96 miles apart and that the Mobile & Ohio can not reach Jackson and the Illinois Central can not reach Meridian except over the line of the Alabama & Vicksburg Railroad.

Defendants also argue that inasmuch as the New Orleans & Northeastern Railroad has established a line of differential rates over Meridian to Hattiesburg which make through rates from St. Louis to Hattiesburg lower than the rates from St. Louis to Meridian (which are the same as to Jackson), plus the local rates from Meridian to Hattiesburg, Hattiesburg is not unduly discriminated against. These differentials are compared with local class rates from Meridian to Hattiesburg, a distance of 85 miles, on a scale of 65 cents first class, and from Vicksburg to Hattiesburg, 136 miles, on a scale of 68 cents first class.

The question of whether or not a rate to an interior point, which is made up of a competitive water or terminal rate plus a local rate, is reasonable, must of necessity depend largely upon the reasonableness of the local rate.

Defendants present numerous instances in which higher rates for shorter hauls are justified by different conditions and circumstances, and compare the differential rates to Hattiesburg with local rates to other points for similar distances, but the comparisons so adduced, which appear to be favorable to Hattiesburg, apparently all come back to the fact that the New Orleans & Northeastern Railroad has accorded Hattiesburg differential rates under a zone system of adjusting its rates, which probably is as far as it has been able to go in line with the conviction of its traffic officers as to what is right and just without the cooperation of its connections, which, apparently, it has been unable to secure.

Defendants call attention to the fact that as a result of the order of the Mississippi commission, above referred to, the rate on grain from St. Louis to Hattiesburg is the same, whether via Vicksburg, Natchez, New Orleans, or Mobile, and that any of those points can ship grain from St. Louis and reship to Hattiesburg at the same total rate as the direct through rate from St. Louis to Hattiesburg. This, however, does not alter the fact that grain is hauled from the north and west through Jackson to Meridian and through Hattiesburg to Meridian at lower rates than apply at Hattiesburg, and is permitted

to be hauled through Hattiesburg to Jackson at lower rates than apply at Hattiesburg.

Defendants argue that to give Hattiesburg the same rates as Meridian would be a gross discrimination against certain junction points in that neighborhood, such as Laurel, Newton, Ellisville, and Lumberton; and this again invites the reply of complainant that the rates at Meridian have not forced reductions at such places. These places, however, are within certain groups established by the New Orleans & Northeastern and Alabama & Vicksburg lines, and thus take the same rates as Hattiesburg. Whether or not a change in the adjustment at Hattiesburg would force or justify a continuance of those groups is a question upon which we have no information and therefore can not decide.

Defendants' witnesses testified that reduction in the rates to Hattiesburg would practically be borne by the trunk lines. This because the less important connecting roads generally have divisions of the rates based on percentages and with fixed minima, which minima are apparently recognized as the lowest division which those lines could be expected to take.

The combination of rates from St. Louis to Meridian, plus the differentials fixed by the New Orleans & Northeastern, makes the through rates to Hattiesburg on all, or substantially all, classes excepting grain and grain products and packing-house products. On grain from St. Louis to Vicksburg, New Orleans, or Mobile the rate is 12 cents per 100 pounds. To this is added the rate of 7 cents from Vicksburg to Hattiesburg, thus making a rate of 19 cents to Hattiesburg. The rate from St. Louis to either Meridian or Jackson is the Vicksburg rate of 12 cents plus $2\frac{1}{2}$ cents, or $14\frac{1}{2}$ cents, to which would be added the New Orleans & Northeastern differential of 5 cents, making a total of $19\frac{1}{2}$ cents to Hattiesburg.

On packing-house products the rate makes on Meridian or Jackson, being $35\frac{1}{2}$ cents plus 5 cents, or $40\frac{1}{2}$ cents. Via New Orleans the rate would be 33 cents plus $18\frac{1}{2}$ cents, or $51\frac{1}{2}$ cents.

The rates from the east to Hattiesburg are made by adding the New Orleans & Northeastern differentials to the rates from the east to Meridian. The rates to Jackson are the same as to Meridian. It is argued by defendants that Meridian is a highly competitive point for traffic from the east as well as from the west, and that the adjustment from the east is influenced by the adjustment from the west.

The railroad commissioners of the state of Mississippi found that, in the matter of rates, Hattiesburg is entitled to be treated as a competitive point, its circumstances and conditions being substantially different from those of any other interior place in the state except Meridian and Jackson. The defendants find no difficulty in defend-

ing the grouping of Vicksburg, Natchez, New Orleans, Gulfport, and Mobile on the ground that the conditions at those places are similar, and are dissimilar to those at other neighboring and intermediate points. Just to the west of Vicksburg we find Shreveport, Alexandria, and Monroe in a well-established group which this Commission has recently declined to order dissolution of. Just east in Alabama are other groups, established, maintained, and defended upon the same ground. And Jackson and Meridian are grouped and that grouping is maintained and defended upon the same reasons and arguments. Of course carriers may voluntarily do many things which they may not lawfully be compelled to do. Some of these defendants could, if they chose, add Hattiesburg to the Jackson-Meridian group, and the others could meet the competition thus created at Hattiesburg, and all of them could no doubt defend that action as strongly and logically as they now defend the Jackson-Meridian group. We can not, however, find that, as a matter of law, Hattiesburg must be so grouped with Jackson and Meridian. As has been stated, the situation at Hattiesburg is unique. However strongly we might feel inclined to relieve the conditions complained of, our actions must be within the provisions of the law and with due and proper regard for the rights of every affected interest.

We can not find that it is unduly discriminatory for the defendants to haul traffic to and from New Orleans, Mobile, and Gulfport at lower rates than they charge to and from Hattiesburg. The controlling effect of the Mississippi River and the Gulf justify that rate adjustment.

The controlling effect of active and potential competition on the Mississippi River warrants the adjustment of common rates to and from Vicksburg, Natchez, New Orleans, and other Mississippi River landings.

We can not find that it is unlawful for the Illinois Central and Alabama & Vicksburg roads to haul traffic between St. Louis and Meridian at the same rates that are charged by the Mobile & Ohio, the direct line between those points. For the same reason we can not find it unlawful for the Mobile & Ohio and the Alabama & Vicksburg roads to haul traffic between St. Louis and Jackson at the same rates that are charged by the Illinois Central, the direct line between those points.

The direct line from Central Freight Association territory or from the South Atlantic ports to Jackson is via Meridian and the Alabama & Vicksburg road. The direct line from the same territories to Hattiesburg is via Meridian and the New Orleans & Northeastern road. The Illinois Central has its own line from Louisville and from Chicago to Jackson.

We can not find, in the light of the decision of the Supreme Court of the United States in *Interstate Commerce Commission v. L. & N. R. R. Co.*, 190 U. S., 273, and of the decision of this Commission in *Aberdeen Group Commercial Asso. v. M. & O. R. R. Co.*, 10 I. C. C. Rep., 289, that it is unlawful for these defendants to meet in the rates from Central Freight Association territory and from the Atlantic ports the competition created at Meridian and Jackson by the lines from St. Louis and by the Illinois Central from Louisville without also giving the same rates to Hattiesburg. True the Alabama & Vicksburg road joins in the competition from St. Louis at both Meridian and Jackson and in the competition from Louisville at Jackson, but, as has been seen, the competition at each place is created by a direct single line from St. Louis or Louisville.

We can not find that it is unlawful for the Alabama & Vicksburg road to join its connections at Meridian in competing for business at Jackson without the New Orleans & Northeastern giving the same advantages to Hattiesburg. Neither the Alabama & Vicksburg nor the New Orleans & Northeastern can control the rates from the north or east to Jackson or to Hattiesburg via Meridian without the consent and concurrence of their connections. If the Alabama & Vicksburg were to withdraw from all competitive business to or from Meridian and Jackson it would neither change the rate adjustment at Meridian or Jackson nor afford Hattiesburg any relief or advantage.

It is possible that Mr. Hattendorf's view that the rates prayed for can not be established at Hattiesburg without the consent of the Illinois Central is somewhat exaggerated. As has been noted, rates generally are the same to New Orleans, Mobile, Gulfport, Natchez, and Vicksburg. The rates to Jackson and Meridian are made something higher than to Vicksburg. If, therefore, any line reaching Hattiesburg should establish rates from Mobile, Gulfport, New Orleans, or Natchez to Hattiesburg which equal the rates from Vicksburg to Jackson or Meridian, Hattiesburg would have the same rates as Jackson and Meridian, and no one can doubt that the competition so created would be promptly met by the other lines. It may be that the effect upon its revenue or its local rates would be so severe as to prevent such action by one line, but worse things have been done in order to force rate adjustments.

As we are unable to find discrimination that is unjust and that we can remove by any lawful, effective, and enforceable order, it follows that an order of dismissal without prejudice must be entered.

16 I. C. C. Rep.

No. 1647.
WHEELER LUMBER, BRIDGE & SUPPLY COMPANY
v.
SOUTHERN PACIFIC COMPANY ET AL.

Submitted April 20, 1909. Decided June 21, 1909.

Complaint asking reparation on the ground that, although a small car was ordered, one of large capacity was provided to meet the convenience of the principal defendant, dismissed for want of proof to sustain the allegation.

George McCarty for complainant.

W. F. Herrin, W. W. Cotton, and Charles H. Bates for Southern Pacific Company.

F. C. Dillard and P. L. Williams for Oregon Railroad & Navigation Company and Oregon Short Line Railroad Company.

William Ellis for Chicago, Milwaukee & St. Paul Railway Company.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

A carload of rough lumber, the actual weight of which was about 30,200 pounds, was shipped by Johnson Brothers from Hillsboro, in the state of Oregon, on August 6, 1906, consigned to the complainant at Algona, Iowa. The terms of the sale of the lumber required that the complainant should bear the freight charges. The shipment was loaded in an open car, the marked capacity of which was 60,000 pounds, and the charges collected aggregated \$243. How that amount was arrived at is not explained. There was a published through rate of 50 cents per 100 pounds, in connection with a minimum weight of 60,000 pounds, or the marked capacity of the car if less than that weight. The defendants have demanded an additional payment of \$57, making the total charges \$300. The petitioner prays for reparation in the sum of \$92, on the ground that, although the consignor ordered a small car, one of large capacity was furnished to meet the convenience of the principal defendant. If a small car had been

furnished, the charges would have been based on the actual weight of the shipment. Issue is joined by the defendants on the question whether a small car was in fact ordered. The case is submitted without any briefs and without a formal hearing, depositions having been taken and filed by both sides.

Neither the bill of lading nor the waybill, copies of which are filed of record, bear any notation indicating that a car of a particular size had been ordered by the shipper; and neither the members of the firm of Johnson Brothers, nor any other witness whose deposition was taken on behalf of the complainant, stated in a definite and convincing way that the order given for the shipment in question required the principal defendant to furnish a car of small capacity. In fact there is filed of record a letter, the genuineness of which the complainant's witnesses would neither admit nor deny, purporting to have been written by an agent of the complainant to Johnson Brothers a short time before this proceeding was instituted, in which the following language is found:

As for the size of the car that you ordered, you should say that it was a small car, for not over 33,000 pounds capacity, as your load was to be about 11,000 feet. I think that if you should make the above statement to the agent there, and also add that the agent who was formerly in that station advised that the car would go all right, and that he failed to mark the B/L "Co. convenience," as he should have done, it would have a good effect and possibly aid us in getting the claim allowed. I do not think that it would be advisable for you to show this letter to the agent, however.

This was written on a printed letter head of the complainant, and from its appearance and all the testimony in relation to it we are compelled to conclude that it is authentic. The defendants construe it as revealing an attempt on the part of the complainant to impose upon the Commission or at least to fortify a claim of doubtful merit.

There is also filed of record a statement said to have been dictated by one of the members of the firm of Johnson Brothers, dated September 26, 1908. Mr. Johnson in his deposition admits the execution of this document and that its statements are true. It reads in part as follows:

Size of car wanted was not specified or car of any particular capacity mentioned, except that about 11,000 feet of lumber was to be loaded. When car was placed and we were notified by agent same was loaded and forwarded August 6, 1906. Do not recollect size or capacity of car furnished, but of opinion it was of small capacity and of suitable size for lumber to be loaded.

Where there is a conflict in the testimony as to the date of a movement, the rate that was lawfully in effect, the route taken, the size of the car actually used, or the weight of the shipment, the official records of the carrier may be resorted to in arriving at a correct conclusion; but where a shipper claims that he ordered a car of a certain

size for a particular shipment and this is denied by the carrier, and it is not pretended that the order was in writing, the conflict can be resolved only by considering all the evidence and ascertaining on which side the preponderance or weight of the testimony may lie. There are no records to aid us on this point of doubt except the record which the complainant has made against itself in the letter from which we have quoted. We are not to be understood as expressing a definite and final conviction that this letter indicates a fraudulent purpose on the part of the complainant to manufacture testimony in aid of a complaint which it was about to file before us. But the least that can be said of it is that it has not made an agreeable impression upon us. Aside from the letter there is nothing in support of the petitioner's contention. The complaint must therefore be dismissed for want of proof to sustain its allegations.

It will be so ordered.

16 I. C. C. Rep.

No. 1557.

MOISE BROTHERS COMPANY

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY
COMPANY ET AL.

Submitted November 9, 1908. Decided June 22, 1909.

1. Complaint alleges that class and commodity rates to Santa Rosa, N. Mex., over defendant railways, from Chicago, Kansas City, St. Louis, and Memphis are unreasonable both in and of themselves and when compared with the through rates from the same points of origin to El Paso, Tex.; violation of section 4 of the act also alleged; *Held*, That, under the circumstances disclosed by the record, complainant's contentions are not sustained. *Pecos Mercantile Co. v. A. T. & S. F. Ry. Co.*, 13 I. C. C. Rep., 173, and *Roswell Commercial Club v. A. T. & S. F. Ry. Co.*, 12 Ib., 339, cited and approved.
2. Defendants having shown that competitive conditions at El Paso compelled lower rates thereto than to Santa Rosa, the burden of proof does not rest upon them to justify their Santa Rosa rates. Having explained and excused violation of section 4, the issue as to the reasonableness of the Santa Rosa rates must take the same course as any other issue involving the reasonableness of rates.
3. Complainant offered testimony tending to show that the Santa Rosa rates should not exceed defendants' division of the through rates to El Paso, and that they ought not to exceed the Santa Fe rates from the same points of origin to Roswell, N. Mex.; but the circumstances and conditions prevailing at El Paso and Roswell afford no bases for measuring the rates to Santa Rosa.

Edward R. Wright for complainant.

E. B. Peirce for Chicago, Rock Island & Pacific Railway Company; Chicago, Rock Island & Gulf Railway Company; Chicago, Rock Island & El Paso Railway Company; and St. Louis, Kansas City & Colorado Railroad Company.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

The defendants constitute what is generally referred to in the transportation world as the "Rock Island system." Under their

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joint through tariffs they form continuous lines of railway from Chicago, Kansas City, St. Louis, and Memphis to Santa Rosa, a local noncompetitive point of about 1,000 inhabitants, in the territory of New Mexico. In conjunction with the rails of the El Paso & Southwestern Railroad Company, which has not been made a party defendant herein, the various roads making up the Rock Island system also form under their joint through tariffs continuous rail lines from the same points of origin through and beyond Santa Rosa, 272 miles in a southwesterly direction to El Paso, in the state of Texas.

The petitioner is engaged at Santa Rosa in a general wholesale and retail mercantile business, and complains that the defendants' rate adjustment is such that it is unable as a jobber to compete with the jobbers of El Paso in much of the territory between Santa Rosa and El Paso; that the through rates to Santa Rosa from the markets in question are higher than the through rates from the same points to El Paso; that the combination of the through rate to El Paso and the local rate back to many intermediate points is less than the sum of the through rate to Santa Rosa and the local rate out to the same destinations; and that as a result of this adjustment of rates the El Paso jobbers are able to control the intermediate consuming markets as far as Vaughn, 42 miles southwest of Santa Rosa on the El Paso & Southwestern Railroad, although, as the petitioner asserts, much of the intermediate territory beyond Vaughn is naturally tributary to Santa Rosa as a distributing center. The petitioner contends that the rates ought to be so adjusted as between El Paso and Santa Rosa as to permit the latter to control the markets on the El Paso & Southwestern at least as far to the southwest as Carizozo, which is 129 miles from Santa Rosa and less than half way to El Paso.

The whole situation is laid before us under a general allegation in the complaint that the class and commodity rates to Santa Rosa over the defendant railways from Chicago and common points, from Kansas City and points taking the same rates, from St. Louis and common points, and from Memphis are unreasonable both in and of themselves and when compared with the through rates from the same points of origin to El Paso. It is contended that the defendants' rates from these points are in violation of section 4 of the act in that higher rates are applied to Santa Rosa than to El Paso, although the shorter haul to the former point is included within the longer haul to El Paso. It may be well here to say that the El Paso & Southwestern Railroad Company ought to have been made a party defendant; for where the rates of carriers are in unlawful violation of the provisions of section 4 of the act it is not the practice of the Commission to enter an order fixing an absolute rate for the shorter haul, but only to

require the carriers guilty of the violation to cease and desist from charging a higher rate for the shorter than for the longer haul. Ordinarily our orders in such cases are intended only to correct the unlawful relation of rates, and give the carriers concerned the option either of increasing the rates for the longer haul or reducing the rates for the shorter haul. As the El Paso & Southwestern Railroad Company is a party to the through rates to El Paso, it would therefore be an essential party to this complaint if as the result of our examination of the record we should find that the rate adjustment complained of is in violation of section 4 of the act; but from the view that we take of the record the nonjoinder by the complainant of the El Paso & Southwestern Railroad Company becomes unimportant.

The fourth section of the act has been frequently under consideration by the Commission and has been the subject of extended comment and explanation in its printed reports in contested cases. It is the assertion in the law of a general principle that appeals strongly to the sense of fairness and justice, namely, that carriers may not, under substantially similar circumstances and conditions, charge more for a shorter than for a longer haul when the shorter haul is in the same direction and is included within the longer haul. In its general application it is essentially an equitable rule so far as the shipper is concerned; but the Supreme Court of the United States in the leading case of *Interstate Commerce Commission v. Alabama Midland Ry. Co.*, 168 U. S., 144, has given recognition also to the equitable rights of the carrier under that section of the act. In the opinions of that court in that and other cases it modified our previous understanding of section 4 of the act and gave much wider scope to the phrase "under substantially similar circumstances and conditions" than we had assigned to it. The adjudicated cases in which this very important discussion was carried on both by the Commission and by the courts are too well known to require any statement of them here. They finally established the principle that any "competition, provided it possessed the attributes of producing a substantial and material effect upon traffic and rate making," may be sufficient to justify lower rates for the longer than for the shorter haul. *Louisville & Nashville R. R. Co. v. Behlmer*, 175 U. S., 648, 671.

The lower rates made by the defendant lines in conjunction with the El Paso & Southwestern Railway for the longer haul to El Paso than are made by the defendants alone for their shorter haul to Santa Rosa, are the result of competitive conditions at El Paso that have already been considered by the Commission. El Paso is on the Rio Grande, and is one of the important gateways through which passes the great volume of traffic between this country and the Republic of Mexico. It is reached by four extensive railway systems,

including the Rock Island in connection with the El Paso & Southwestern; and their rates to El Paso are controlled more or less effectually by the rates upon which traffic may reach the consuming markets of Mexico through its own ports. There is also a substantial movement of traffic to El Paso through Galveston and New Orleans. All this has been fully explained in *Pecos Mercantile Co. v. A., T. & S. F. Ry. Co.*, 13 I. C. C. Rep., 173, 177, and further explanation here seems unnecessary. Moreover, the record shows that the Rock Island system, in conjunction with the El Paso & Southwestern, was the last of the four systems to build into El Paso. In order to participate in the traffic to that point from St. Louis, Chicago, and the other great markets mentioned in the complaint, no other course was open to it but to meet and maintain the rates of its competitors, and this it has done.

While the element of competition that enters into the fixing of the rates to El Paso is not recognized in the complaint, the petitioner in the brief filed on its behalf substantially admits the existence of competitive conditions that justify lower rates to El Paso than to Santa Rosa. But it contends that the competition is not such as to warrant rates for the shorter haul to Santa Rosa that are so much in excess of the rates for the longer haul to El Paso; and it insists that the burden of justifying the Santa Rosa rates rests upon the defendants. The complainant's record was apparently made upon that theory, but we do not so understand the law. The competitive conditions at El Paso are fixed and absolute, and admit of no halfway measures on the part of the defendants; if the conditions there are met at all in the defendants' rates, they must be fully met without regard to the Santa Rosa rates. The defendants have shown what these conditions at El Paso are, and how they compel lower rates to El Paso than to Santa Rosa. But it is not our understanding that section 4 of the act which required them to explain and justify the lower rates to El Paso requires them also to assume the burden of justifying their Santa Rosa rates. Having explained and excused the violation in their rates of the provisions of section 4, the issue as to the reasonableness of the Santa Rosa rates must take the same course as any other issue involving the reasonableness of rates, and must fall or prevail on the record as made, aided by such information as the Commission may acquire from other sources.

In connection with its contention that the Santa Rosa rates are unreasonable in and of themselves, the complainant calls attention to the fact that the Rock Island retains 75 per cent of the through rate to El Paso for its haul to Santa Rosa of traffic destined to El Paso. The other 25 per cent is the division on through traffic of the El Paso & Southwestern for its haul from Santa Rosa. The complainant

contends that if 75 per cent of the lower through rates to El Paso yields a profit to the defendant lines for hauling the through traffic as far as Santa Rosa, their higher through rates on traffic destined to Santa Rosa must of necessity yield them more than a reasonable profit. This suggestion is not a strong one, for if the through rate to El Paso is a compelled rate, as we have found it to be, the division retained by the defendants is also a compelled division. But in view of the repeated announcement by the Commission of its unwillingness ordinarily to accept a division of a through rate as a basis upon which to test the reasonableness of a local rate, it will not be necessary to discuss that contention at this time. *Thatcher v. D. & H. Canal Co.*, 1 I. C. C. Rep., 152; *Omaha Cooperage Co. v. N., C. & St. L. Ry. Co.*, 12 I. C. C. Rep., 250; *Bulte Milling Co. v. C. & A. R. R. Co.*, 15 I. C. C. Rep., 351, 362. We therefore proceed to examine the record for the purpose of ascertaining how far it supports the allegation that the rates to Santa Rosa are excessive and unreasonable in and of themselves.

It was agreed at the hearing that the records in *Pecos Mercantile Company v. A., T. & S. F. Ry. Co.*, *supra*, and *Roswell Commercial Club v. A., T. & S. F. Ry. Co.*, 12 I. C. C. Rep., 339, might be referred to on the argument by either party, and more particularly with respect to the findings of fact by the Commission in its reports in the two cases. It is not improbable that our decision in the latter case suggested the filing of this complaint; for the rates to Santa Rosa were at one time adjusted by the defendants substantially on the basis of the rates of the Atchison, Topeka & Santa Fe to Roswell, and the order of the Commission in that case, requiring a reduction in the Roswell rates, doubtless led the complainant to think that a reduction should also be made by these defendants in the rates to Santa Rosa. There is no pretense, however, that the two towns are in any sense competitive. Besides the complainant there is but one other jobber at Santa Rosa, and neither of them seems to come into contact at any point with the jobbers of Roswell. Both towns are in New Mexico, Roswell being about 86 miles farther from Kansas City over the Santa Fe lines than Santa Rosa is over the lines of the defendants. It appears from the record that the general physical conditions, so far as operation is concerned, are substantially similar on the two lines.

Beyond the similarity in operating conditions, the circumstances surrounding traffic to the two points are widely dissimilar. Roswell is in the Pecos Valley more than 100 miles south of Santa Rosa, and is adjacent to the rapidly developing Panhandle of Texas. While the entire countryside, as we found in the case cited, was an arid region a few years ago, devoted solely to grazing and supposedly susceptible of no other use, the successful development of artesian wells for

irrigation purposes had resulted in rapidly bringing many thousands of acres under cultivation, and in an increase of population at Roswell from 2,000 to 6,000 inhabitants during the preceding six years. This rapid growth was followed by an increase in the tonnage of the Pecos Valley lines from about 244,000 tons in 1902 to nearly 500,000 tons in 1906. A larger volume of tonnage tends to lower rates, and the point was made in that case that these changed conditions required a reduction in the Roswell rates. In reaching its conclusions the Commission regarded these matters as material facts in the case.

Santa Rosa and the outlying countryside, on the other hand, as we infer from the record, are now substantially in the condition in which Roswell and its vicinity were six or eight years ago. The town is at the head of the Pecos Valley, and the country that surrounds it is not only sparsely settled, but is productive of comparatively little tonnage. Considered by itself, this part of New Mexico would probably not afford an inviting prospect to the promoter of a new line, and the Rock Island system, as is stated in the record, was constructed through this country to the boundary line between the United States and the Republic of Mexico, not for the local traffic, but in order to participate in the large through traffic between the two countries. During the calendar year ending September 1, 1907, the through traffic moving between Bravo and Santa Rosa over the Rock Island system amounted to 1,090,879 tons. During the same period the local traffic between the same points amounted to only 76,734 tons. Santa Rosa, in other words, has not enjoyed the development and rapid growth, either in population or commercially, that were accepted by the Commission in the case cited as one of the reasons justifying lower rates to Roswell. While there may have been some similarity in 1903 in the conditions surrounding the traffic to the two places, we do not see that the Roswell situation to-day affords a basis for measuring the rates to Santa Rosa. As has been stated, the two towns are in no sense competitive, and there are no reasons why their respective rates should be regarded as having a definite relation to one another.

The complainant offered no testimony in support of its petition beyond the two suggestions to which we have alluded, namely, that the Santa Rosa rates of the defendants ought not to exceed their division of the through rates to El Paso, and that they ought not to exceed the Santa Fe rates from the same points of origin to Roswell. But our own investigation discloses the fact that a substantial change in the relation of rates to Santa Rosa and El Paso was made effective by the joint action of the defendants and the El Paso & Southwestern shortly after the testimony herein was taken. It ought to go far toward ameliorating the situation of which complaint

was made. When the petition was filed the class rates to Santa Rosa from St. Louis which may be taken as a fairly illustrative point of origin exceeded the class rates from the same point to El Paso by the following differentials in cents per 100 pounds:

Class	1	2	3	4	5	A	B	C	D	E
	21	45	55	27	26	28	19	17	13	11

After the hearing was had, on September 11, 1908, the class rates to El Paso from St. Louis were substantially increased, while the class rates to Santa Rosa were even more substantially reduced. The result was that the differentials against Santa Rosa were very materially narrowed. Its class rates from St. Louis now exceed the class rates from that point to El Paso by the following differentials:

Class	1	2	3	4	5	A	B	C	D	E
	36	27	17	12	14	15	8	11	7	6

While the commodity rates from St. Louis to Santa Rosa have been reduced to a limited extent, the commodity rates from St. Louis to El Paso have been appreciably advanced, so that the differentials against Santa Rosa on articles moving under commodity rates are now materially less than they were when the complaint was filed.

On the whole record we see no occasion for disturbing the present rates to Santa Rosa; but there are one or two matters of which some mention should be made. The rates over the defendant lines from the points in question are graduated on an ascending scale to Santa Rosa. From that point as far to the southwest as and including Dog Cañon all stations on the El Paso & Southwestern are grouped with Santa Rosa and take the same rates. From Dog Cañon to El Paso the rates are adjusted on a descending scale, all points taking rates that are lower than the Santa Rosa rates, but higher than the El Paso rates. The petitioner complains that the grouping of those points with Santa Rosa, Dog Cañon being as much as 200 miles more distant from St. Louis, Chicago, and other points of origin, is wholly arbitrary; that if Dog Cañon is entitled to a rate on first class articles of \$2.15 per 100 pounds from Chicago, Santa Rosa, which is 200 miles nearer that trade center, ought to take a somewhat lower rate.

The complainant regards this as a discrimination against Santa Rosa and contends that the group should be broken up and that Santa Rosa should be given rates proportionally less than the rates to other points in the group according to their respective mileage. We are not prepared to adopt that suggestion. It is not uncommon to make groups of distant points; all points in practically the entire set-area of Texas take identical rates from St. Louis, Chicago, and

the east, although the haul to more distant points in that state may sometimes be as much as 400 miles longer than to the more adjacent points. No reasons are urged by the complainant for the breaking up of the group, except that Santa Rosa, being near to St. Louis and the other markets, would then get lower rates than the other points in the group.

The complainant calls our attention to the fact that the through rate to Tucumcari, a point on the lines of the defendants about 59 miles east of Santa Rosa, plus the local rate from Tucumcari to Santa Rosa, makes less on some commodities than the through rate to Santa Rosa. If this be the case, such rates are subject to the general condemnation that the Commission has already made of through rates in excess of the sum of the local rates. Unless a satisfactory explanation exists, such rates ought at once to be corrected, and we shall look to the defendants to make the corrections promptly or to advise us of their reasons for not doing so. We are inclined, also, to think that the local rates of the El Paso & Southwestern between El Paso and Santa Rosa ought to be readjusted, so that Santa Rosa as compared with El Paso may enter the markets on the lines of that company as far to the southwest as that can be arranged upon any consistently adjusted schedule of local rates. As that company is not before us, and as the reasonableness of its local rates has not been questioned here, we shall look to the defendants to take up the matter with that line with a view to carrying out this suggestion and to advise us of the result. For the present we shall enter no order herein.

No. 1832.
SUNNYSIDE COAL MINING COMPANY
v.
DENVER & RIO GRANDE RAILROAD COMPANY ET AL.

Submitted February 25, 1909. Decided June 21, 1909.

1. Complainant shipped from Strong, Colo., a carload of lump coal consigned to its order, notify another party at Milford, Nebr. This shipment arrived at Milford and notice of such arrival was given consignee, who refused the shipment. The consignor was immediately notified of such refusal, and the shipment was reconsigned to Lincoln, Nebr., after the expiration of seventy-two hours.
2. The Commission is not convinced that defendants are subject to a penalty in this case for failure to notify consignor of refusal of the shipment at destination by consignee in time to admit of the reconsignment to a new destination before the expiration of seventy-two hours after the completion of the transportation service contemplated under the original contract of shipment. Nor does the fact that defendants have since voluntarily canceled the limitation period to meet a commercial condition afford a just basis for reparation on past shipments. The Commission does not feel justified in initiating or extending the application of reconsignment privileges unless deemed necessary to correct unjust discrimination. Reparation denied.

C. W. Durbin for complainant.

E. N. Clark for Denver & Rio Grande Railroad Company.

Chester M. Daves and *Vaile, McAllister & Vaile* for Chicago, Burlington & Quincy Railroad Company.

REPORT OF THE COMMISSION.

CLEMENTS, Commissioner:

On or about September 11, 1908, complainant shipped from its mine at Strong, Colo., a carload of lump coal, consisting of 62,500 pounds, consigned to its order, notify A. A. Schultz, at Milford, Nebr. This shipment arrived at Milford 1.30 p. m., September 30, and notice of such arrival was given consignee after 7 a. m., October 1; the shipment was refused by consignee on the morning of October 2, and consignor was immediately notified of such refusal. Complainant thereupon undertook to find a purchaser at Milford, but failing in this the shipment was reconsigned to Lincoln, Nebr., on October 7.

Defendants contend that the contract of shipment as evidenced by the original bill of lading was completed upon arrival of the shipment at Milford; that therefore the movement from Milford to Lincoln was a separate and distinct shipment between two points both in the state of Nebraska, and hence this Commission has no authority to pass upon the reasonableness of any charge incident to such movement beyond Milford.

At the time this shipment arrived at Milford, the Chicago, Burlington & Quincy Railroad was party to a tariff permitting reconsignment to a new destination "in the same general direction as to the point to which the traffic was originally consigned," if made within seventy-two hours after arrival at first destination, this time allowance being computed from the time of notice to consignee of arrival. As already shown, the consignee in this instance refused to accept the shipment and the consignor received no notice of such refusal until after the expiration of seventy-two hours from the time of arrival at Milford.

This seventy-two hour limitation, complainant contends, is unreasonable in that it permits consignees to take advantage of shippers by refusing consignments, and then after expiration of the period within which reconsignments may be effected at the through rate they offer less than the contract price, knowing that the shipment can not be diverted to a new destination without loss to the shipper. The seventy-two hour limitation has since been abolished.

The defendants claim that this shipment was not entitled to the privilege of reconsignment at the through rate from Strong, Colo., to Lincoln, Nebr., either under the application of the old or the current tariff, for the reason that Milford is not intermediate via the natural and direct route over defendants' rails from Strong to Lincoln.

The Commission has consistently held in the past that it could not with propriety make a reconsignment privilege retroactive in practical effect by ordering reparation on shipments made at a time when the same was not available, the basis of such reparation being the nonavailability of such privilege at the time shipments moved and the subsequent publication of the same. It seems clear that the privilege as published in tariffs in effect at the time the shipment in question moved was not applicable thereon because one of the essential conditions under which that privilege was to be had, to wit, that the reconsignment should be accomplished within seventy-two hours after arrival of the shipment at first destination, was not met.

We are not convinced that the carriers are subject to a penalty in this case for failure to notify consignor of refusal of the shipment at destination by consignee in time to admit of the reconsignment to

a new destination before the expiration of seventy-two hours after the completion of the transportation service contemplated under the original contract of shipment. Nor does the fact that the defendants have since voluntarily canceled the limitation period to meet a commercial condition afford a just basis for reparation on past shipments.

Irrespective, therefore, of the question as to whether the movement from Milford to Lincoln was interstate transportation (as to which we express no opinion), we find no basis for an order against the defendants.

No. 1669.

CEDAR HILL COAL & COKE COMPANY

v.

COLORADO & SOUTHERN RAILWAY COMPANY ET AL.

Submitted March 20, 1909. Decided June 21, 1909.

1. Complainant shipped 2 carloads of coal from Rugby, Colo., to Iuka, Kans., consigned to its order, but on arrival at Iuka these shipments were refused by consignee, and, after being held there 30 days, were reshipped by order of complainant back to Preston, Kans., for which latter transportation the local rate was charged.
2. There is no warrant for the application of charges upon any other basis than as made up of the combination of local rates from Rugby to Iuka and Iuka to Preston. Complaint dismissed.

C. W. Durbin for complainant.

E. E. Whitted for Colorado & Southern Railway Company.

Jas. C. Jeffery for Missouri Pacific Railway Company.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

On July 23 and August 2, 1906, complainant shipped 2 carloads of coal from Rugby, Colo., to Iuka, Kans., consigned to its order, the rate between these points being \$3 per net ton. On arrival at Iuka these shipments were refused by consignee, and after being held at that point thirty days, were reshipped, upon the order of complainant, back to Preston, Kans., a point through which they had been hauled, for which transportation charges were collected at the rate of 3 cents per 100 pounds, covering the haul of 9.6 miles. Complainant challenges the reasonableness of the latter rate and contends that this

Commission should prescribe a rate based on one-half cent per ton per mile, subject to a minimum charge of \$5 per car, to cover reconsignments involving a back haul.

Defendants deny jurisdiction on the part of the Commission to consider and pass upon the reasonableness of the charge exacted for the transportation of these shipments from Iuka to Preston, on the ground that the original contract of carriage being fully performed upon arrival of the coal at Iuka, the direction given by complainant to the agent of the Missouri Pacific to reforward these shipments to Preston and the compliance of the latter therewith constituted a new contract of carriage involving an intrastate movement.

If, upon the facts stated, we were convinced that this second movement from Iuka to Preston was interstate transportation and, therefore, within the jurisdiction of the Commission (and upon this point we express no opinion), we find no facts upon which we would be justified in making the order asked by complainant, and none upon which to base an award for reparation. The case will therefore be dismissed.

No. 1603.

WINTERS METALLIC PAINT COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
ET AL.

Submitted April 16, 1909. Decided June 22, 1909.

Complainant awarded reparation on its shipments of ground iron ore from Iron Ridge, Wis., to Michigan City, Ind., and Louisville, Ky., based upon the lower rates now in effect.

Albert L. Vogl for complainant.

William Ellis for Chicago, Milwaukee & St. Paul Railway Company.

G. W. Kretzinger for Chicago, Indianapolis & Louisville Railway Company.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

This is a claim for \$131.38, the amount of alleged overcharge on 7 carloads, aggregating 262,400 pounds, of ground iron ore, shipped on various dates between January 17 and October 5, 1907, from Iron Ridge, Wis., to Michigan City, Ind., upon which total freight charges were collected in the amount of \$463.63, and one carload, weighing 40,000 pounds, shipped April 30, 1907, from Iron Ridge to Louisville, Ky., upon which freight charges were collected amounting to \$102.

Between January 17 and October 5, 1907, the rate in effect via the Chicago, Milwaukee & St. Paul road from Iron Ridge to Milwaukee was 5 cents per 100 pounds, from Milwaukee to Michigan City via the Pere Marquette road 8½ cents, and from Milwaukee to Louisville 15 cents per 100 pounds. Thus on the Milwaukee combination the rate from Iron Ridge to Michigan City was 13½ cents, and to Louisville 20 cents per 100 pounds. However, during this period the joint

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through rate in effect and lawfully applicable on shipments of ground iron ore billed through from Iron Ridge to Michigan City via Milwaukee and the Pere Marquette was $21\frac{1}{2}$ cents, and to Louisville, Ky., $25\frac{1}{2}$ cents per 100 pounds. The joint through rate from Iron Ridge to Michigan City via Chicago, published by the Chicago, Milwaukee & St. Paul in connection with the Monon Route, was the same as via Milwaukee ($21\frac{1}{2}$ cents per 100 pounds), but the combination via Chicago was in excess of that via Milwaukee, being 18 cents per 100 pounds.

Complainant delivered the shipment in question to the Chicago, Milwaukee & St. Paul road at Iron Ridge without routing instructions inserted in the bill of lading, but with verbal instructions to the agent to forward the shipments via the cheapest route. It will be seen from the above statement of the rates that there was no "cheapest route" at the time these shipments moved, since the same joint through rate was in effect from Iron Ridge to Michigan City via the Milwaukee and Chicago gateways; so that the railroad agent, observing that the rates were the same, forwarded the shipments via Chicago and the Monon Route.

At the present time there is no joint through rate published from Iron Ridge to Michigan City either via Milwaukee or Chicago, rates via both gateways being made on combination, resulting in a rate of $13\frac{1}{2}$ cents via Milwaukee on a minimum carload of 30,000 and $16\frac{1}{2}$ cents via Chicago on a minimum of 36,000 pounds.

Since there was no route at the time these shipments moved over which the agent of initial carrier could have forwarded the same at a cheaper rate than the joint through rate of $21\frac{1}{2}$ cents in effect via both gateways for application on such traffic billed through from Iron Ridge to Michigan City, we can not hold that this is a case of misrouting for which the initial carrier is responsible. Such being the case the lowest rate which could have been lawfully applied was that in effect via the route over which the shipments actually moved, and any reparation which may be awarded must be predicated upon the rate which, in the opinion of the Commission, is reasonable via that route. The haul via the Monon Route being more circuitous, we do not consider it just to force the carriers to meet the lower rate covering the shorter haul via the Pere Marquette. We do think, however, that the carriers should apply the rate of $16\frac{1}{2}$ cents per 100 pounds now in effect on the shipments here involved.

From the freight bills, filed in the record, covering the shipments from Iron Ridge to Michigan City, we find that an aggregate of \$463.63 was paid as freight charges. The application of the rate of $16\frac{1}{2}$ cents per 100 pounds, minimum carload 36,000 pounds, results in charges of \$432.96.

On the shipment to Louisville, Ky., consisting of 40,000 pounds of ground iron ore, the charges collected at the rate of 25½ cents per 100 pounds amounted to \$102. The rate now in effect made on Milwaukee combination is 14.82 cents per 100 pounds. We are of the opinion that this rate should be applied on the shipment in question, making the amount of reparation due complainant on this shipment \$42.72.

An order will be entered directing defendants to pay unto complainant the sum of \$73.39, with interest.

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No. 1817.
ALBERT PRESTON
v.
CHESAPEAKE & OHIO RAILWAY COMPANY ET AL.

Submitted May 20, 1909. Decided June 24, 1909.

The higher charge in this case resulted directly from the routing specified by the shipper, for which the defendant was in no way responsible, and therefore the complaint asking for reparation on account of misrouting will be dismissed.

Noel W. Barksdale for complainant.

H. T. Wickham for Chesapeake & Ohio Railway Company.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

The complainant asks reparation in the sum of \$59.49, due to the alleged misrouting of two shipments of chestnut ties from Vanceburg, Ky., to Carroll Park Siding, Baltimore, Md. These shipments moved from Vanceburg via Huntington, W. Va., to destination, over which route a rate of 24 cents per 100 pounds applied. The complainant claims that they should have moved via Staunton, Va., over which route a rate of 18½ cents was applicable. The shipper, complainant's consignor, ordered routing of shipments via the line they actually moved. Reparation is asked wholly on the ground of misrouting. The reasonableness of the rate is not attacked.

It is well settled that in the absence of specific routing instructions a carrier is obliged ordinarily to carry a given shipment tendered via the route taking the lowest rate. However, where a shipper directs the routing, it is the duty of the carrier to follow his instructions. The higher charge in this case resulted directly from the routing specified by the shipper, for which the carrier was in no way responsible. For this reason the complaint will be dismissed.

No. 2096.
LINK-BELT COMPANY
v.
CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL.

Submitted May 24, 1909. Decided June 24, 1909.

Under the circumstances of this case the application of the machinery rate to complainant's shipments of parts of a dredging machine was authorized by the tariffs of defendants. Complaint dismissed.

A. H. Wilson and B. A. Gayman for complainant.

F. C. Dillard for Union Pacific Railroad Company and Southern Pacific Company.

S. A. Lynde for Chicago & North Western Railway Company.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

On September 2, 1907, complainant caused to be shipped from Chicago, Ill., to Oroville, Cal., 4 cars loaded with parts of a dredging machine. The shipment consisted of an iron spud, 61 feet 3 inches long, weighing 23,295 pounds, and a steel ladder frame 66 feet long, weighing 53,575 pounds. The shipment was billed at Chicago by the consignor as structural steel. Freight at the published rate of 75 cents per 100 pounds on the shipment as billed was prepaid at Chicago to the Chicago & North Western. The charge exacted was \$921.75. While the shipment was in transit it was reclassified by the Southern Pacific as "machinery;" the rate applicable to this classification is \$1.53 per 100 pounds. An additional sum amounting to \$715.37 was collected of the shipper at destination. It is alleged in the complaint that the rate of \$1.53 per 100 pounds collected by defendants was unreasonable and unjust to the extent that it exceeded 75 cents. It is contended by complainant that the shipment should have been carried as structural steel, and that the application of the machinery rate resulted in the overcharge claimed.

It was admitted at the hearing by complainant that the rate on structural steel of 75 cents per 100 pounds is the published rate to

Pacific coast terminals; that the rate to Oroville is 13 cents per 100 pounds more, and that the total rate should have been alleged as 88 cents per 100 pounds.

The complaining company operates a foundry and machine shop in Chicago. It manufactures upon order mining dredges, which are large machines used in raising mineral-bearing sand and gravel from the beds of streams or lakes.

The El Oro Dredging Company ordered of complainant a dredging machine to be shipped to Oroville. In fulfillment of the order complainant constructed the machine except the spud and ladder frame above mentioned. The construction of these parts of the machine was sublet to the Morava Construction Company, iron and steel bridge builders in Chicago. The parts of the machine manufactured by complainant were shipped as machinery about the same time, but not with the shipments in question.

The spud is made of channel iron with heavy iron castings riveted in the end. It was loaded for shipment upon 2 flat cars. The ladder frame was also loaded on 2 flat cars. It is built of steel and was shipped in sections with castings and certain finishing on some of the parts. T. F. B. West Bound tariff 1-C provides as follows:

Bridge and wharf material consisting of iron or steel beams, columns, girders, plates (No. 11 and heavier), brackets, rods (with head, eyes, or screw threads) angle and channel irons, bolts, and material (in shape) used in constructing iron and steel bridges; minimum weight 30,000 pounds for each car used.

It was admitted that the shipments could not be construed to be bridge or wharf material as mentioned in this provision of the tariff, but it was insisted that they were analogous to bridge material and therefore should take the same rate. It is provided in the tariff above quoted:

Rates on commodities specified on pages 40 and 41 and 43 to 146, inclusive, are specific and must not be applied to analogous articles. All articles for which commodity rates are not herein specifically provided will be subject to class rates applicable under current Western Classification.

In Western Classification at the time the shipments moved, dredging machines n. o. s., minimum 24,000 pounds, took Class A rating. Under the transcontinental tariff dredging machines take Class A rating under the heading of "Machinery and machines" in Western Classification. The provision reads as follows:

Machinery and machines taking Class A rates specified under head of "Machinery and machines" in current Western Classification, including shingle machines (iron), link belting, roller mills, pulley clutches, sheaving (iron), rollers (iron), water jackets for smelters and wheels (iron gear), windlasses, winches, ship steerers, drag saws with steam or horse power attachments, and stamp-mill mortars, straight or mixed carloads; minimum weight 24,000 pounds.

The Class A rate to Marysville, Cal., is \$1.40 and from Marysville to Oroville 13 cents per 100 pounds.

Transcontinental westbound tariff 1-G carries a rate of 75 cents per 100 pounds to Pacific terminals on iron and steel articles described as follows:

Angle, channel, beams, columns, circular frames, girders, braces, rods (with head, eye, or screw threads), pulleys (not machinery), weights, chain zees, tees, rails, joist hangers, post caps and bases, tank and plate (No. 11 and heavier), punched or unpunched, bent or not bent, sidewalk and floor plates (without glass), rivets (not less than one-half inch in diameter), washers, nuts, and bolts (not including carriage, wagon, machine, and lag bolts), minimum weight 30,000 pounds for each car used.

The evidence shows that the shipments in question were parts of a dredging machine, that the dredge was not complete without them, and that they were fitted and shipped ready to be fastened into place in the machine. It does not appear that there was any specified description in the tariffs to fit these parts of machines shipped separately, except the Class A rate of machinery n. o. s. The articles shipped clearly do not fall within the description of structural steel nor within the description of iron and steel articles in the transcontinental tariff. It follows that they could only be carried as machinery n. o. s.

Under these circumstances we find that the application of the machinery rate to the shipments in question was authorized by the tariffs of defendants. No evidence was presented by complainant as to the unreasonableness of the machinery rate. The evidence related only to the terms of the tariffs and classifications applicable. We are unable to find on this record that complainant was subjected to unreasonable charges, and his complaint will therefore be dismissed.

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No. 1812.

HILL & WEBB

v.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY ET AL.

Submitted May 14, 1909. Decided June 24, 1909.

Reparation awarded on account of misrouted shipment.

J. W. Webb for complainants.*J. C. McCabe* for Chicago, Rock Island & Pacific Railway Company,

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

Complainants on May 20, 1908, delivered to the Missouri, Kansas & Texas Railway Company, at Tupelo, Okla., one carload of corn in the shuck, weighing 44,000 pounds, billing the same without routing instructions to Forrest City, Ark. At that time there was no joint rate via the Missouri, Kansas & Texas between the points named, but there was via the Oklahoma Central Railway in connection with the Chicago, Rock Island & Pacific Railway, a rate of 17½ cents that would have applied if the shipment had been delivered to the Oklahoma Central at Tupelo. It was the duty of the Missouri, Kansas & Texas Railway Company to route the shipment via the junction which would have made the lowest combination of locals between the points of origin and destination, which junction was with the Chicago, Rock Island & Pacific at Lehigh, Okla. Had the Missouri, Kansas & Texas routed the car via Lehigh the rates applicable would have been 5 cents per 100 pounds to Lehigh and 16½ cents thence to destination, which would have resulted in a total charge of \$94.60. The Missouri, Kansas & Texas, however, carried the car beyond Lehigh and delivered it to the Chicago, Rock Island & Pacific at McAlester, and total charges were collected at destination of \$108.90.

Complainants ask for reparation on the basis of the through rate of 17½ cents via another line, but the complete answer to that prayer

is that in order to be entitled to that rate the shipment should have been delivered to the other line by them or by their agent at Tupelo. It is an entirely erroneous assumption that where there are two or more lines with different rates between two points a shipper may secure the application of the lowest rate by either of such lines regardless of which one he uses. The law requires each carrier to adhere to its own established rate. There is no evidence in the case warranting a finding of any lower rate than the combination of the locals outlined above of 21½ cents per 100 pounds, and we accordingly conclude that the complainants are entitled to reparation from the Missouri, Kansas & Texas alone in the sum of \$14.30, with interest.

An order in accordance herewith will be issued.

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No. 2084.

CRANE BROTHERS

v.

CINCINNATI, HAMILTON & DAYTON RAILWAY COM-
PANY ET AL.

Submitted June 1, 1909. Decided June 28, 1909.

Reparation awarded for unreasonable charges exacted on 3 carloads of manure shipped from Chicago, Ill., to Toledo, Ohio.

John R. Calder for complainants.

William Ainsworth Parker for Baltimore & Ohio Railroad Company.

Edward Colston for Cincinnati, Hamilton & Dayton Railway Company and receiver thereof.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

Complainants shipped 3 carloads of manure via defendants' lines from Chicago, Ill., to Toledo, Ohio, in June, 1907, charges being collected in the amount of \$203.80, or at the established sixth class rate of 10 cents per 100 pounds. At the same time there was in effect on this traffic a commodity rate of \$1 per 2,000 pounds via the line of the Flint & Pere Marquette Railroad Company. On March 16, 1908, this rate was made effective via the lines of the defendants. Complainants contend that the rate charged was unjust and unreasonable, and ask reparation in the amount of \$101.60, the difference between the charges collected and the charges which would accrue under the present rate.

We find that the rate charged by defendants on these shipments was unjust and unreasonable to the extent that it exceeds the present rate of \$1 per 2,000 pounds. Reparation will be awarded in the amount prayed for, with interest from the date of payment of the freight charges herein. Defendants will be further required to maintain for a period of not less than two years a rate on manure in carloads from Chicago to Toledo not to exceed \$1 per 2,000 pounds.

No. 2052.

FORT DODGE COMMERCIAL CLUB, OF FORT DODGE, IOWA,

v.

ILLINOIS CENTRAL RAILROAD COMPANY.

No. 2182.

SAME

v.

ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted June 23, 1909. Decided June 23, 1909.

Defendants' rates for the transportation of coal and coke and of various commodities named in the complaints from Chicago, Ill., and other points, to Fort Dodge, Iowa, are not found, under the circumstances disclosed by the record, to be unjust and unreasonable relatively as compared with rates from the same points of origin to Des Moines, Iowa, and Albert Lea, Minn.; neither is Fort Dodge unjustly discriminated against by reason of the rate adjustment in question.

B. J. Price for complainant.

Blewett Lee for Illinois Central Railroad Company.

H. Loomis for Chicago Great Western Railway Company and receivers.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

By agreement of parties these cases will be considered and determined in one report.

Complainant, an Iowa corporation located at Fort Dodge, has for its object the advancement of the interests of that city, and defendants are common carriers amenable to the act.

The complaint in No. 2052 assails rates on coal, hard and soft, and on coke from Chicago and other Illinois points to Fort Dodge as being unjust and unreasonable *per se* and relatively, particularly as compared with rates to Des Moines, Iowa, and to Albert Lea, Minn.

At the hearing, however, the gist of the complaint was narrowed to

the rates from Chicago on West Virginia splint coal, thus eliminating the necessity of consideration of the hard coal and coke rates.

No. 2182 is similar in essence to 2052, the rates attacked, however, being those applicable from Chicago to Fort Dodge on many commodities. Briefly, on all the commodities except peanuts, the rates are alleged to be to Des Moines 1 cent and to Albert Lea from one-half cent to 6½ cents per 100 pounds lower than to Fort Dodge. On peanuts the difference in favor of Des Moines is 2½ cents.

Defendants, answering, admit the averments of the petitions in relation to the status of complainant, location of Fort Dodge and the rates set forth, but deny that said rates are in and of themselves unjust or unreasonable or that they unduly discriminate against Fort Dodge in favor of Des Moines or Albert Lea.

Fort Dodge has about 15,000 inhabitants, and with the exception of Sioux City is the largest town in northwestern Iowa. It is located on the main line of the defendant Illinois Central Railroad between Chicago, Ill., and Omaha, Nebr. It is about 50 miles northwest of the center of Iowa, 86 miles from Des Moines, 125 miles east of the Missouri River, and 190 miles west of the Mississippi River. It is distant from Chicago via lines of defendant, Illinois Central, approximately 375 miles, and by shortest rail route 368 miles. It is also reached by the Minneapolis & St. Louis and the Fort Dodge, Des Moines & Southern railroads.

Des Moines is not on the line of the defendant, Illinois Central, but is located on the main line of defendant, Chicago Great Western Railway, and is served by nine other carriers. Its population is upward of 100,000, and via the Rock Island line it is 358 miles from Chicago and 340 miles from St. Louis.

Albert Lea is located in the southern central part of Minnesota, 119 miles from St. Paul, and about 100 miles northeast of Fort Dodge. It is reached by five railroads, and has a population of approximately 6,000. It is distant from Chicago by shortest rail route 382 miles. The Chicago Great Western Railway does not reach Albert Lea.

No. 2052 will be treated under "Coal" and No. 2182 under "Commodities."

COAL.

From the testimony in No. 2052 it appears that if the relief sought is granted it would principally inure to the benefit of the Plymouth Clay Products Company, a member of complainant club and a manufacturer of sewer pipe and other clay products at Fort Dodge, which is located in a region rich in clay and gypsum. Experiments were made by the Plymouth Clay Products Company with Iowa, Illinois, and Indiana coals and with West Virginia splint, and it was found that the last, being practically free from sulphur, and having the

highest heat value gave most satisfactory results. In firing the kiln and burning the ware great heat is required, and as the sulphur content of the coal affects the glaze the West Virginia splint coal is preferred. The Clay Products Company has about \$150,000 invested in Fort Dodge, and has been in operation nearly two years and ships out about 1,200 cars of its products a year. It uses approximately 4,000 tons of West Virginia splint coal a year, probably one-half of the total amount of that coal used in Fort Dodge. The rate thereon from Chicago to Fort Dodge is \$1.55 per ton.

At the time the complaint was filed the defendant, Illinois Central, hauled coal from Chicago and other Illinois points through Fort Dodge destined to Des Moines on a rate of \$1.60 per ton. Since the complaint was filed it has routed this traffic through Iowa Falls instead of Fort Dodge, making the distance from Chicago to Des Moines 61 miles less. The rate on soft coal from Chicago to Albert Lea is \$1.40. Complainant considers that it should be placed on a parity with Albert Lea, although the Clay Products Company has no competition at that point, and be given a reduction of 45 cents in its rate, which would save the Clay Products Company over \$3,600 a year in freight charges.

The testimony shows, generally speaking, that many manufacturers of sewer pipe and clay products do not find it necessary to use West Virginia splint coal for firing the kiln in order to obtain the glaze on their wares and successfully compete with their competitors. However, in some instances the nature of the soil requires a coal free from sulphur. Most clay products manufacturers use surface clay, but the Clay Products Company mines that which it uses. Iowa coal, moving on Iowa commission rates, and Indiana coal, moving on Chicago rates, both of which are high in heat units, are more generally used for both steam and firing purposes. Manufacturers of sewer pipe and clay products at Des Moines use Indiana coal for firing their kilns.

All the witnesses for complainant testified that in their opinion the rate to Fort Dodge was not only unjust and unreasonable, but unjustly discriminatory, and in that respect there was submitted an exhibit showing comparative coal rates to Fort Dodge, Des Moines, Chicago, Omaha, Minneapolis, and other points, giving distance, weight, and cents per car per mile, with a view of showing that in many cases in which rates are given the cents per car mile to Fort Dodge are higher. Complainant also submitted statement of freight rates on rough stone, brick, pig iron, and salt as compared with the rates on coal, giving the value per ton of each article and value per car load, as tending to show the unreasonableness of the rates

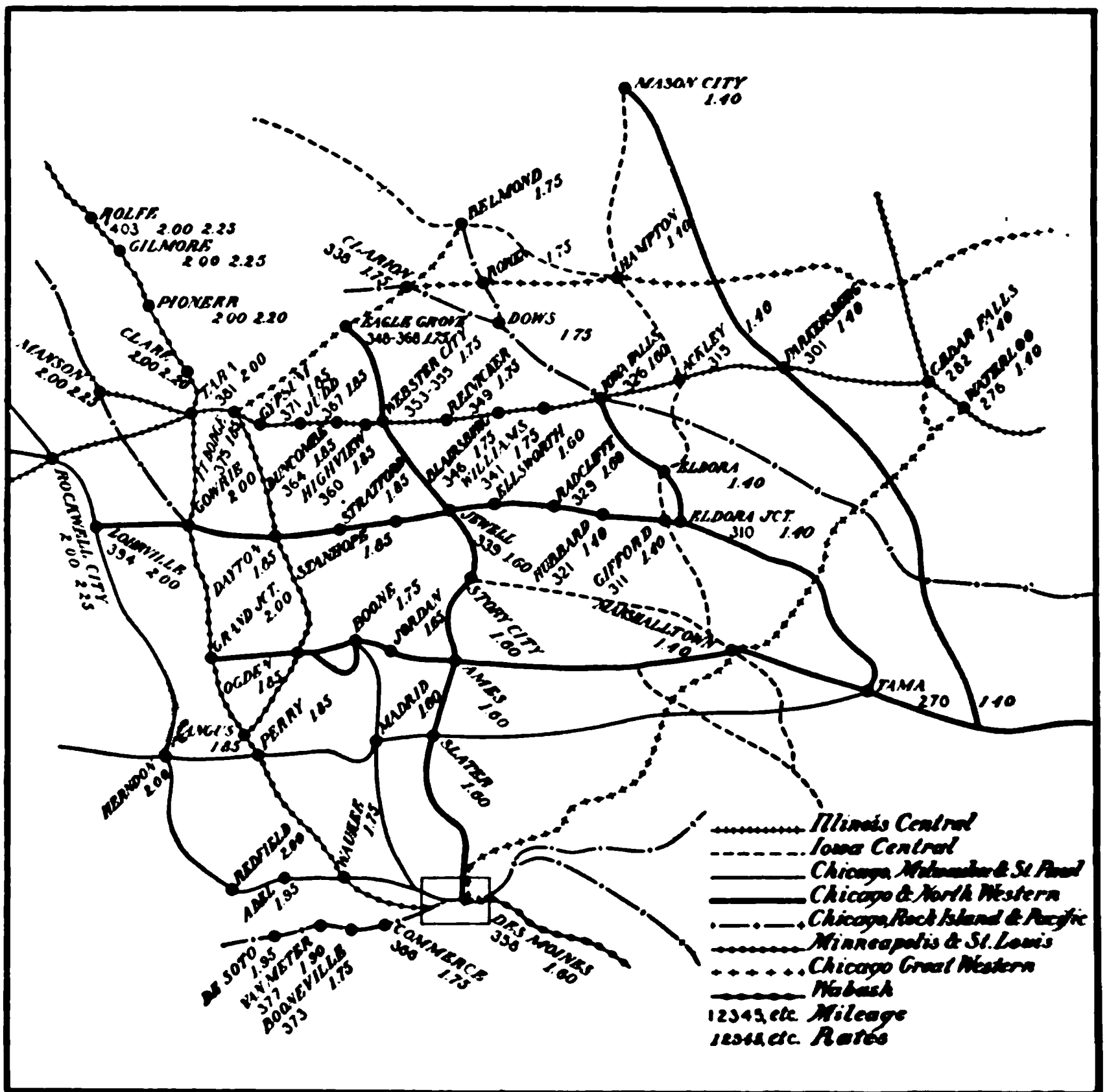
Defendant's witnesses testify that coal rates are established and maintained for reasons distinct from those which enter into the making of other rates; that the large volume of coal traffic and keen competition in coal-producing states, water and railroad transportation, as well as commercial conditions, make coal rates a study in which mileage is frequently a negligible quantity. One witness testified that comparisons of coal rates with rates upon such articles as stone, salt, and pig iron are not helpful for the reason that coal rates can not be properly considered, except in respect to the transportation of that article alone. It appears that the rate on coal from Chicago to Albert Lea is made on the basis of the rate to St. Paul and Duluth. The \$1.40 rate to St. Paul was originally established by the direct line to that point, and was made necessary by the 90-cent rate from Duluth and the \$1.15 rate from Manitowoc.

Fort Dodge is not intermediate, Chicago to Albert Lea, on the Illinois Central. The distance from Chicago to Albert Lea via the line of the defendant, is 384 miles, and via the lines of the other carriers reaching that point, ranges from 375 miles to 550 miles. The Chicago, Milwaukee & St. Paul road is the short line.

The coal rates to Des Moines are fixed by the Wabash Railroad, the short line from St. Louis or East St. Louis. It established from those points to Des Moines a rate of \$1.60 per ton, and also carried that rate from the Springfield, Ill., district, the distance from which to Des Moines is 363 miles. The line of the Wabash terminates at Des Moines. Necessarily the carrying by the Wabash of the same rate from Illinois mines to Des Moines as from St. Louis forced the other roads operating into Des Moines to establish the same rate in order to secure any of the business. The accompanying map showing the adjustment of rates on bituminous coal from Chicago to central Iowa is a part of the record.

It will be seen that the rate to Fort Dodge is in line with the adjustment of rates in that territory by all carriers, and that the rate gradually increases according to distance from Chicago. Points intermediate to St. Paul on the direct line, the Iowa Central and the Minneapolis & St. Louis roads, which do not reach Chicago, enjoy the lower St. Paul rate. Defendant's position is that the rates to Des Moines and Albert Lea are unreasonably low and should not be used as a basis on which to rest a reduction in the rates to Fort Dodge. It is alleged that if the reduction sought was made it would have the effect of disturbing the adjustment of rates in an exceedingly wide territory, not alone the interstate rates, but the state rates of Iowa as well. It is shown that Indiana and Iowa keenly feel the competition of Illinois, and it is testified that in the struggle for territory they would retaliate by reducing rates in order to continue in the

business. The volume of coal transported by the defendant represents 34 per cent of its entire traffic, but the revenue from it is only 16 per cent of its total earnings. It appears that it costs more to produce coal in Iowa, and wages are higher there than in Illinois. The coal veins are thicker in Illinois than in Iowa, and therefore coal is more easily produced. There are coal mines at Lehigh and at Coalville, distant from Fort Dodge, respectively, 15 miles and 6 miles. The rate to Fort Dodge from the former is 42 cents per ton and from the latter \$5 per car on



the Chicago Great Western and \$7 per car on the Illinois Central. The rate from Chicago to Fort Dodge was, prior to November, 1906, \$2 per ton, at which time it was reduced to \$1.85.

It appears that splint coal is used for domestic purposes and is sold in Fort Dodge at \$7 per ton. One witness testified that Iowa coal is very generally used in gypsum plants and clay industries in Fort Dodge, and that no complaint had been made about it. Owing to the adjustment of rates, coal mines in Iowa have gradually had the territory in which they can compete restricted. While the coal

deposits are seemingly almost inexhaustible, the production has decreased, and some of the Iowa operators can not ship east of the Iowa Central line, because at that point they meet the competition of Illinois mines. Wherever Iowa and Illinois coal can be had for the same price, it appears that Illinois coal is preferred. It is alleged that a reduction of 45 cents per ton in the Chicago-Fort Dodge rate would drive certain Iowa coal fields out of business. In other words, if the \$1.40 rate were extended to Fort Dodge and the territory which would have to be included in such reduction, the additional territory covered by the \$1.40 rate would be practically handed over to the Illinois operators, as the testimony shows that the Iowa miner can not compete in territory to which the rate from Chicago is \$1.40. Complainant suggests that defendant charges more for its haul of the West Virginia coal from Chicago than is charged by the carriers east of Chicago for the haul to that point. What must be considered here, however, is the reasonableness of a rate of \$1.85 per ton on bituminous coal from Chicago to Fort Dodge, which, it is seen, yields something less than 5 mills per ton per mile.

While the rate from Chicago to Des Moines is \$1.60, the quantity of coal moving under that rate is extremely limited. Probably but little more than a thousand tons of splint and smokeless coal per annum are now shipped to Des Moines under that rate, but the amount of Indiana coal is not shown.

COMMODITIES.

Three witnesses were presented by complainant: A buyer for the Fort Dodge Grocery Company, which has an investment in Fort Dodge of \$150,000, and which ships the commodities in which it deals from Fort Dodge in all directions within a radius of about 100 miles; the business manager of the Prussia Hardware Company, whose complaint was solely directed against rates on wire, nails, and fencing; and the secretary of the Iowa State Manufacturers' Association.

It appears that Fort Dodge has been agitating the question of lower freight rates for a long time, and in that connection has had conferences with traffic officials of roads entering it in which some intimation has been made that the adjustment of rates to Fort Dodge was out of line. On account of its protest reductions were made in certain class rates and in some commodity rates. Fort Dodge comes in competition with Albert Lea, 100 miles north; Waterloo, 100 miles east; Des Moines, 86 miles south; and Sioux City, 134 miles west.

A great portion of northwestern Iowa, from Ackley on the east and Perry and Smithland on the south, with the exception of terri-

tory controlled by Sioux City, is, under the present adjustment of rates, territory in which Fort Dodge can successfully compete.

Having more lines, Des Moines can naturally reach more points on one local rate than can Fort Dodge. Under Iowa state rates a joint rate must be 80 per cent of the sum of the local rates.

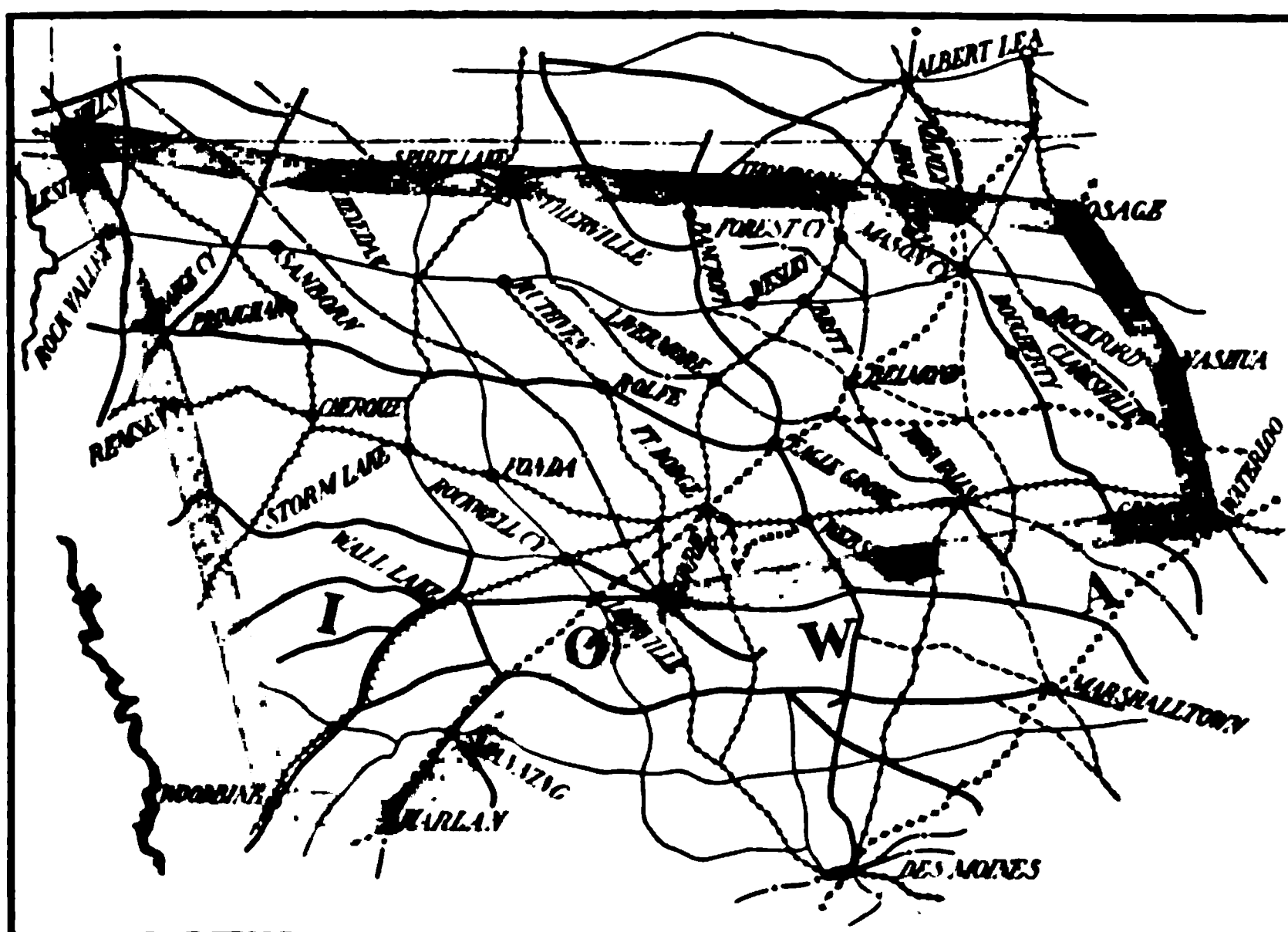
So far as nails, wire, and fencing are concerned, Fort Dodge has no competition at Albert Lea, but does compete with Des Moines. These commodities are staple articles which are sold in large quantities and on which the margins of profit are small. The value per car is about \$900 and the profit 10 cents per 100 pounds, or \$36 per car of 36,000 pounds, and \$50 per car of 50,000 pounds. The difference in freight per car as between Des Moines and Fort Dodge is \$3.60 and \$5 per car, respectively. Fort Dodge competes not only with Des Moines, but with Chicago, St. Paul, Minneapolis, Dubuque, Waterloo, and Sioux City.

As tending to show unreasonableness of the rates complained of, complainant submitted an exhibit showing a comparison of rates on the commodities in controversy on basis of per car per mile from Milwaukee to East St. Louis, 361 miles; Chicago to Kansas City, 458 miles; Chicago to Fort Dodge, 375 miles; and Duluth to Des Moines, 471 miles, as to which it is alleged that the circumstances and conditions are similar, and in which it is shown that in all instances the rate per car mile is higher from Chicago to Fort Dodge than between the other points.

The evidence shows that the same factors which are present with respect to coal rates have an effect upon commodity rates—that is, the defendants are compelled to meet at Des Moines the rates established by the Rock Island, the short line from Chicago, and all of the Chicago roads must there meet the competition of St. Louis. Whatever may be the defendants' opinion as to the reasonableness of the rates to Des Moines or to Albert Lea, they have not the power to raise them, because so to do would simply deprive them of the business to those points in which they are now engaging.

When the original act to regulate commerce became effective the roads at Albert Lea, the Burlington, Cedar Rapids & Northern, in connection with the Minneapolis & St. Louis, and their connections, fearing the long-and-short-haul clause, established the St. Paul rates as maxima at Albert Lea and other intermediate points. Subsequently, when the Illinois Central secured trackage rights into Albert Lea it adopted the rates which had been established by the other roads. The same situation prevails as to the St. Louis-St. Paul rates, Albert Lea being intermediate. In other words, the competition of carriers at Albert Lea and reflected water and commercial competition at St. Paul operate, in connection with the fourth section of the law, to give Albert Lea its lower basis of rates.

A map was filed showing the points surrounding Fort Dodge to which it can do a jobbing business, accompanied by a statement in which the carload rates on the commodities in controversy into Fort Dodge, Des Moines, and Albert Lea and the less-than-carload rates from those points were taken, from which the conclusion is drawn that, with the exception of points close to Albert Lea, the present adjustment of rates does not place Fort Dodge at a disadvantage compared with Albert Lea and Des Moines in jobbing. That it is able to hold its own in the territory is illustrated by the following map, the shaded line on which embraces territory within which Fort Dodge can compete on even terms or at an advantage as compared with competing distributing towns.



- | | |
|---|---|
| ----- Illinois Central | ----- Chicago Great Western |
| ===== Chicago & North Western | ----- Iowa Central |
| ===== Chicago, Milwaukee & St. Paul | ----- Minneapolis & St. Louis |
| -.-.-.-.- Chicago Rock Island & Pacific | ===== Wabash |
| ===== Great Northern | ===== Chicago St. Paul, Minneapolis & Omaha |
| ===== Union & Northwestern | ----- Crooked Creek |
| ----- Des Moines, Iowa Falls & Northern | ----- Chicago, Burlington & Quincy |

Complainant filed an exhibit, from which it appears that Fort Dodge sells dry goods in Nebraska, North and South Dakota, Iowa, and Minnesota; that the Plymouth Clay Products Company gets into northern, southwestern, and southeastern Iowa, southern and northern Minnesota, Wisconsin, Michigan, Illinois, and North Dakota; that the International Harvester Company reaches 20 counties from there, and, generally speaking, that its firms operate in a wide territory. The fact that Fort Dodge is favorably situated to take advantage of Iowa distance rates is of course no reason for exacting from it

unreasonable interstate rates, but in determining the reasonableness of rate adjustments as between contending distributing points or centers the Commission must give consideration to the total rates, in and out.

Complainant argues that by the pleadings it has made out a *prima facie* case and that the burden of proof having shifted to defendants they have failed to justify the difference in rates.

Statement showing rates, in cents per 100 pounds, on various commodities from Chicago, Ill., to points named.

Commodity.	To Fort Dodge, Iowa.	To Des Moines, Iowa.	To Albert Lea, Minn.
	Cents.	Cents.	Cents.
Agricultural implements.....	26	25	20
Bags.....	20	19	21
Barn-door hangers.....	25	24	20
Cereal products.....	24	23	
Glucose.....	22	21	17
Hides, east bound only.....	34	33	
Iron pipe.....	16½	15½	12½
Iron scrap, tin scrap.....	13	12	8
Matches.....	22½	21½	17½
Paints.....	24½	23½	19½
Paint (dry).....	19½	18½	18
Paper:			
Item 183.....	19	18	14½
Item 184.....	15	14	11
Paper tablets.....	22	21	18
Paper scrap.....	16½	15½	12½
Peanuts.....	31½	29	
Railway material.....	14½	13½	14
Rails and fastenings.....	¢ 255	¢ 235	¢ 201
Shot.....	14	13	
Sal soda.....	21½	20½	17½
Starch.....	17	16	15
Stone.....	13	12	10
Vinegar.....	21½	20½	17

¢ In cents per 2,000 pounds.

The above statement shows rates in effect June 23, 1909. In all instances they are the same as were in effect on date petition was filed, with the exception of increases of 1 cent on iron scrap and tin scrap to Fort Dodge, Des Moines, and Mason City, and one-half cent on vinegar to Fort Dodge and Des Moines.

Statement showing class rates, in cents per 100 pounds, from Chicago, Ill., and St. Louis, Mo., to points named.

FROM CHICAGO, ILL.

To—	Class.									
	1.	2.	3.	4.	5.	A.	B.	C.	D.	E.
	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
Fort Dodge, Iowa....	72	54	42	30	24½	29½	24½	20	15½	13½
Des Moines, Iowa....	68	50	40	29	23½	28½	23½	19	15½	12½
Albert Lea, Minn....	60	50	40	25	20	25	20	17	14	13

Chicago Great Western Ry., I. C. C. No. 4284; C. M. & St. P. Ry., I. C. C. No. A-7890.

Statement showing class rates, in cents per 100 pounds, from Chicago, Ill., and St. Louis, Mo., to points named—Continued.

FROM ST. LOUIS, MO.

To—	Class.									
	1.	2.	3.	4.	5.	A.	B.	C.	D.	E.
	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
Fort Dodge, Iowa...	72	54	42	30	24½	20½	24½	20	16½	13½
Des Moines, Iowa...	60	45	35	26	20½	24½	19½	16½	13½	11
Albert Lea, Minn...	63	52½	42	26	21	26	21	18	15	13½

Wabash System, I. C. C. No. 1446; Chicago Great Western Ry., I. C. C. No. 2947; Western Trunk Line, I. C. C. No. 744.

The two statements show that, with the exception of rates on the first three numbered classes, and commodity rates on peanuts, the difference between Fort Dodge and Des Moines from Chicago is one cent; that is, that the adjustment is consistent throughout. It will be seen that the class rates from St. Louis to Des Moines are materially less than from Chicago to Des Moines while the class rates to Fort Dodge from both St. Louis and Chicago are the same. This is more than suggestive that the competition of St. Louis is more potent and compelling at Des Moines than at Fort Dodge. The St. Louis-Des Moines rate is made by the Wabash and the Chicago-Des Moines rates are made certain arbitraries above the St. Louis rates. No St. Louis road runs into Fort Dodge, except the Illinois Central, and its line from St. Louis to Fort Dodge is roundabout via Freeport, Ill., and Dubuque, Iowa.

We can not find that complainant's contention that it is on a pinnacle of high rates is supported by the facts. A difference of a cent or less per 100 pounds might represent such a substantial difference as to constitute an unjust discrimination when the circumstances and conditions surrounding the transportation are substantially similar. Such, however, is not the case here, and whether or not a discrimination shall be removed is not measured by its amount, whether large or small, but by a determination of whether or not it is undue.

The great weight of complainant's testimony is directed against the reasonableness of the rates considered from the standpoint of distance or mileage. Its exhibits of comparative distances and the higher rates per car per mile resolve themselves into that alone. Unquestionably mileage is a factor in the determination of the reasonableness of rates, but how important, or what effect it should have in judging the fairness of a challenged rate is a question which must be answered in the light of all the facts surrounding the exaction of the rate. Early after its organization the Commission held that it was not the purpose of the act to compel the establishment of rates solely according to mileage, and that the public benefits, the greater volume of business to carriers warranting lower rates to all, the force of competition, and

many other potent considerations might far outweigh a claim of right founded only on geographic location. *Imperial Coal Co. v. P. & L. E. R. R. Co.*, 2 I. C. C. Rep., 618.

The following excerpts are also applicable here:

The words "reasonable" and "just," as applied to rates, do not mean that the rates upon every railroad shall be the same or even about the same. The circumstances and conditions of each road, which enter into and control the nature and character of the service performed, such as the cost of service, which involves volume or lightness of traffic, expense of construction and of operation, competition of carriers not subject to the act, rates made by shorter and competing lines to the same points of destination, space occupied by freight, value of freight and risk of carriage to the carrier, must all be considered in determining whether a given rate is "reasonable" and "just." Tested by these rules, a rate may be reasonable and just on one railroad and not reasonable and just on another. *New Orleans Cotton Exchange v. I. C. R. R. Co. et al.*, 3 I. C. C. Rep., 534.

While the revenue per ton per mile over other routes on other lines and to other destinations is often suggestive in arriving at a proper estimate of the reasonableness of a rate over a route complained of, it is by no means conclusive. Varying conditions existing on different lines must of necessity justify difference in rates for hauls of the same distance. The real question in any such complaint is the reasonableness of the particular rate on the particular line between the particular points in question. In testing such a rate the rates on the same or adjacent lines in the immediate territory where the same conditions exist are of much greater significance than rates over lines in other sections of the country. *Dallas Freight Bureau v. G., C. & S. F. Ry. Co. et al.*, 12 I. C. C. Rep., 223.

As previously indicated, the rate per ton per mile on coal for the haul of 375 miles from Chicago to Fort Dodge is slightly less than 5 mills; certainly not a high rate. *Johnston v. St. L. & S. F. R. R. Co.*, 12 I. C. C. Rep., 73. *Lincoln Commercial Club v. C., R. I. & P. Ry. Co.*, 13 I. C. C. Rep., 319; *Okla. & Ark. Coal Traffic Bureau v. C., R. I. & P. Ry. Co.*, 14 I. C. C. Rep., 216.

Coal is a low-grade freight, moving in vast quantities; it is a natural product and the commercial conditions surrounding its production, the competitive conditions under which it moves, and its varying cost in different fields, make the rates on it such as should be given more careful scrutiny, perhaps, than the rates on many other commodities. This record discloses the interdependence of the whole rate adjustment in a wide territory.

The Commission does not feel that the rate of \$1.85 per ton on coal from Chicago to Fort Dodge is, in and of itself unjust or unreasonable. We have seen that the conditions at Des Moines and Albert Lea are materially different from those obtaining at Fort Dodge. The fact that the rates are consistent over a large area. No such case has been made as would justify the Commission in disturbing the present adjustment, the rate itself not having been found

Had the rate been found unreasonable the fact that its removal would require a new alignment would not deter the Commission so ordering. Complainants sometimes, in a laudable

desire to foster home industries, unconsciously, perhaps, give undue weight to their own claims. The Commission, however, must take a broad and extended view of the interests of all shippers, the public and the railroads. The Commission does not find that Fort Dodge is unjustly discriminated against by the rate on coal complained of.

Similar observations are equally pertinent and could be made with equal or greater force with respect to the commodity rates. Certainly a difference of 1 cent in the rates to Des Moines is justified by the conditions at that point, so different from those at Fort Dodge, and Des Moines is the real competitor and the real key to the rate adjustment in that territory. Fort Dodge could do more business and make more money on a lower basis of rates if other points were not correspondingly lowered. That consideration, however, is not one which commends itself to the Commission as a reason for reducing the rates.

So far as Albert Lea is concerned, we have seen that the rates which it is accorded have been of long standing; that they were established in compliance with the fourth section of the law, and to meet competition. It is said by the complainant that if the fourth section is not actually operative the carriers could have availed themselves of the decisions of the Supreme Court of the United States and made the rates to Albert Lea higher than to St. Paul. Every carrier is required to observe the provisions of the law, and in the absence of showing to the contrary it is presumed to be so doing in respect to Albert Lea. In any event, the rates to that point are not at issue here, except as comparisons, and we do not find that the circumstances and conditions are so substantially similar as to constitute unjust discrimination against Fort Dodge. As has been noted, these defendants do not haul traffic through Fort Dodge to Albert Lea, and they can with perfect ease haul all their traffic between Chicago and Des Moines via Waterloo or Iowa Falls and thus shorten the haul and avoid passing through Fort Dodge.

In case No. 2182 we deal solely with the relative adjustment of rates to Fort Dodge, Des Moines, and Albert Lea. The reasonableness of class and commodity rates from the Mississippi River to Des Moines will be determined in another proceeding now before the Commission and, presumably, if any change is made therein it will affect rates to other Iowa points.

On the record the Commission is of the opinion that the complaints should be dismissed, and it is so ordered

No. 1926.

ALPHIONS CUSTODIS CHIMNEY CONSTRUCTION
COMPANY

v.

SOUTHERN RAILWAY COMPANY ET AL.

Submitted March 30, 1909. Decided June 28, 1909.

Reparation awarded on certain shipments of stack chimney brick from North Birmingham, Ala., to Washington, D. C.

R. B. Hepner for complainant.

S. P. C. Neffler for Southern Railway Company.

REPORT OF THE COMMISSION.

COCKRELL, Commissioner:

The complainant corporation made numerous carload shipments of stack chimney brick from North Birmingham, Ala., to Washington, D. C., between March 28 and July 16, 1906, paying freight charges to the amount of \$2,460.86. On two shipments a rate of 29 cents per 100 pounds and on all other shipments a rate of 20 cents per 100 pounds was charged and collected by the defendants. For the purpose of obtaining reparation only, no order for the establishment of a future rate being asked, the complainant assails as unjust and unreasonable these rates and claims that a rate of 18 cents per 100 pounds was a reasonable rate and should have been charged, because the defendant Southern Railway, through its traffic representatives, agreed to publish an 18-cent rate by the following letter dated February 17, 1906:

I beg to quote on chimney brick Birmingham to Washington, D. C., 18 cents per 100 pounds. Will have to be advised in advance of movement in order that we may publish this rate.

This letter was accepted verbally and confirmed by complainant's consignor by the following letter, dated February 27, 1906:

Referring to your letter of February 17, we beg to inform you that this letter is now ready to move. In fact, one car has gone forward, B/L 426, dated Southern B. O. delivery.

Between March 28 and April 27, 1906, complainant shipped 10 carloads of brick upon which no reparation should be allowed, for the reason that they were charged only the lawful rate under the tariff in force at that time, 20 cents per 100 pounds, and there is nothing in the record convincing that the 20-cent rate was unreasonable or excessive. The understanding or agreement between the carrier and the shipper is far from conclusive as to the unreasonableness of that rate, particularly in view of the fact that a lower rate would have been published early enough to take care of the shipments at the lower rate but for the shipper's own carelessness in failing to notify the carrier in time.

Effective April 29, 1906, in supplement No. 113 to Southern Railway eastbound tariff No. 8711, a rate of 18 cents per 100 pounds on chimney brick in carloads, minimum 50,000 pounds, from North Birmingham to Washington, D. C., was published. Between May 12 and July 16, 1906, 12 carloads of such brick, weighing 605,157 pounds actual weight, were shipped by complainant under this 18-cent rate. Three of these carloads fell below the minimum weight specified in the tariff, weighing 44,700, 43,000, and 36,400 pounds, respectively, thus weighing 25,900 pounds less than the minimum, and 25,900 pounds must, therefore, be added to the actual weight, making the weight for which charges must be assessed 631,057 pounds. Upon these 12 carloads the complainant was charged \$1,348.16, and under the tariff the charge should have been \$1,135.90, and the result is the complainant is entitled to reparation in the sum of \$212.26 with interest.

Prior to April 29, 1906, the rate on common brick from North Birmingham, Ala., to Washington, D. C., was 20 cents per 100 pounds in carloads, and the 18-cent rate above referred to, on stack or chimney brick in carloads, became effective on that date after the shipment began to move, remaining in effect until May 31, 1907, when it was canceled, leaving the rate on common brick in effect. The defendants admit that the 20-cent rate applied on common brick should have been applied on the chimney brick, and that the collection of the 20-cent rate on two shipments and the exaction of the 20-cent rate on 9 cars moving after April 29, 1906, when the 18-cent rate became effective, resulted in an excessive and unreasonable charge. But it denies that the 20-cent rate exacted on the other shipments prior to April 29, 1906, was unjust and unreasonable, upon the ground that the publication of the 18-cent rate was made as soon as practicable.

The only evidence before the Commission from which we could decide that the exaction of this 20-cent rate was unreasonable prior to April 29, 1906, is the fact that the carrier quoted the 18-cent rate to the complainant, and it did not become effective until after a part of the shipments had moved.

We can not predicate our conclusion that a rate is unreasonable upon the mere fact that a carrier agreed to lower a rate and did lower it after the movement began and then canceled the rate after the movement discontinued. It seems to us that such a rate on its face is in the form of a rebate giving special privileges to a certain shipper who has special knowledge of the lowering of the rate and furnishes no benefit to the general public.

Under the facts appearing in this case we find that a reasonable charge for the transportation of stack-chimney brick between the points in question prior to April 29, 1906, was 20 cents per 100 pounds, that being the rate lawfully in effect on common brick.

We further find that the total overcharge in this case amounts to \$212.26, and an order will be drawn awarding such amount to the complainant with interest. This claim for reparation was filed informally with the Commission April 20, 1908.

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Nos. 1600, 1601, 1602, 1604, 1605, 1606, and 1607.

WINTERS METALLIC PAINT COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
ET AL.

Submitted April 16, 1909. Decided June 22, 1909.

1. Complainant challenges the reasonableness of defendants' freight rates on ground iron ore from Iron Ridge, Wis., to various points in other states; *Held*, That ground iron ore should be accorded rates from Iron Ridge, Wis., to points in Central Freight Association and Trunk Line territories which shall not exceed the regular sixth class ratings applying under the Official Classification between the same points; also that this commodity is entitled to Class D ratings under the Western Classification from Iron Ridge to points in Western Trunk Line Association territory.
2. Complainant also asks that the Commission order the construction and maintenance of a private side track from the main line of the St. Paul road to its mills. By section 1 of the amended act to regulate commerce the Commission is authorized to order the construction and maintenance upon reasonable terms of "a switch connection" with any lateral branch line of railroad or "private side track which may be constructed to connect with its railroad, where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same." From the language of this section it is clear that the Commission has no authority to order the construction of a *private side track* by a railroad company, but that its authority is limited to ordering a carrier to make "a switch connection" with a private side track.

Albert L. Vogl for complainant.

William Ellis for Chicago, Milwaukee & St. Paul Railway Company.

Vaile, McAllister & Vaile for Chicago, Burlington & Quincy Railroad Company.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

These cases challenge the reasonableness of defendants' freight rates on ground iron ore from Iron Ridge, Wis., to various points in other states. They were heard and submitted together and consolidated into one case, and will be disposed of in one report and order.

The product which complainant manufactures and sells, viz, ground iron ore, constitutes the base of a metallic paint used generally in car works. The cost of production is from \$6 to \$6.50 per ton and the average selling price f. o. b. mills \$9.50 per ton. The capacity of complainant's plant is from 1,800 to 2,000 tons per year, but prior to 1907 complainant shipped only about 400 tons per annum. This, however, was increased to 950 tons in 1907. In 1908, on account of the financial stringency, complainant's shipments decreased to 550 tons, but are now steadily increasing.

The main reliance of complainant is upon the allegation that the rates on ground iron ore are unreasonable *per se*, it being contended that this commodity should have as low a classification rating as pig iron for the reason that it has a somewhat lower market value.

It is asserted by defendants that there is no theory of classification which entitles ground iron ore to be classified with pig iron, and it is argued that for purposes of classification the former must be considered a finished product, while pig iron is a raw material; that the volume of shipments which ground iron ore furnishes to carriers is infinitesimal as compared with the pig-iron traffic (complainant's witness testified that the annual consumption of ground iron ore in the United States amounts to only 30,000 tons); that pig iron may be shipped in open cars or any other class of equipment, whereas ground iron ore must be placed in closed cars, because it is liable to be damaged by rain; and finally, that there is no analogy between the two commodities in the uses to which they are put. With particular reference to this traffic from Iron Ridge, it appears that there is no movement to that point which brings in empty equipment for the outbound movement of ground iron ore.

The classification of pig iron under the Official Classification is sixth class, minimum weight 25 gross tons, whereas ground iron ore nominally takes fifth class rates, minimum weight 36,000 pounds. Under the Western Classification pig iron takes Class D rates, minimum weight 50,000 pounds, and ground iron ore Class C rates, minimum weight 36,000 pounds. By exceptions to the Official Classification the western trunk lines apply sixth class ratings to ground iron ore from Iron Ridge and other Western Trunk Line Association territory to trunk line and Central Freight Association territories, where through rates are governed by the Official Classification, and since the hearing the Pennsylvania Company has published commodity rates from Milwaukee which are applicable on ground iron ore originating at Iron Ridge, Wis., materially lower than the regular sixth class rates.

While the Commission does not consider value as the sole test of the reasonableness of classification ratings applied uniformly between

many points, it does appear that ground iron ore is such a low-grade commodity that it can not move unless accorded comparatively low rates. Upon the whole we are of the opinion that ground iron ore should be accorded rates from Iron Ridge, Wis., to points in Central Freight Association and trunk line territories which shall not exceed the regular sixth class ratings applying under the Official Classification between the same points. We are also of the opinion that this commodity is entitled to Class D ratings under the Western Classification from Iron Ridge to points in Western Trunk Line Association territory. However, our order in these cases will be limited to the points specified in the petitions filed herein.

In case No. 1601, besides challenging the reasonableness of the rates on ground iron ore from Iron Ridge to various destinations, complainant prays that the Commission order the construction and maintenance of a private side track from the main line of the St. Paul road to its mills, a distance of 425 feet over the property of the Illinois Steel Company and a public highway. At the hearing complainant's witness stated that his company would not undertake to build or to defray any part of the expense incident to the construction of this siding.

By section 1 of the amended act to regulate commerce the Commission is authorized to order the construction and maintenance, upon reasonable terms, of "a switch connection" with any lateral branch line of railroad, or "private side track *which may be constructed* to connect with its railroad, where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same." From the language of this section it is clear that the Commission has no authority to order the construction of a *private side track* by a railroad company, but that its authority is limited to ordering a carrier to make "a switch connection" *with* a private side track. Certainly our authority does not embrace the power to order a carrier to construct and maintain a side track off its right of way and without direct contribution by the shipper to the expense incident thereto.

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No. 1698.

W. S. DUNCAN & COMPANY ET AL.

v.

NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY COMPANY ET AL.

Submitted February 25, 1909. Decided June 24, 1909.

1. The payment of the so-called "elevation allowance" to dealers in hay, grain, and grain products at Nashville, Tenn., is an undue and unlawful discrimination.
2. Where carriers have in effect a uniform rate per 100 pounds for any quantity, which rate applies uniformly to all shippers, a different rate applied to carloads from that applied to less than carloads will not be ordered, especially when such differential will have a tendency to increase the rate on less than carloads, and further, to cut off consumers and small dealers from purchasing at distant markets in less-than-carload lots.
3. Shipments of grain, grain products, and hay are carried from the Ohio and Mississippi River crossings and points north and west thereof to Nashville at local rates, and quantities of these articles are afterwards reshipped and rebilled from Nashville to points in the southeast at the local rate, but the difference between the sum of the locals thus collected and the through rate from crossing point to ultimate destination is refunded to the shipper through the claims department of the railroad company. There is no agreement for through carriage between shipper and carrier at the original point of shipment, no other destination than Nashville is named, and upon delivery of grain to that point it loses its identity and is in every respect a local shipment; *Held*, That the circumstances and conditions prevailing at Nashville are not so dissimilar from those prevailing at other points in the southeast as to warrant a continuance of this privilege at Nashville without undue discrimination, to the prejudice and disadvantage of points in that territory not having a similar privilege; *Held further*, That this privilege operates as a device by which traffic may move at less than the lawful tariff rate.

Wimbish, Watkins & Ellis for complainants.

S. F. Andrews for Nashville, Chattanooga & St. Louis Railway Company; Atlantic Coast Line Railroad Company; Cincinnati, New Orleans & Texas Pacific Railway Company; Alabama Great Southern Railroad Company; Georgia Southern & Florida Railway Company; Illinois Central Railroad Company; Central of Georgia Railway Company; Seaboard Air Line Railway, and S. Davies Warfield,

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R. Lancaster Williams, and B. C. Duncan, receivers thereof; Atlanta & West Point Railroad Company; Western Railway of Alabama, and the Southern Railway Company.

Perkins Baxter for Louisville & Nashville Railroad Company.

Claudian B. Northrop for Southern Railway Company.

Luke Lea for Nashville Grain Exchange and Nashville Board of Trade, of Nashville, Tenn., Interveners.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

This complaint is brought by a large number of commercial houses located at Atlanta and other Georgia cities who allege that the carriers have granted to Nashville, Tenn., through the adjustment of rates, rules, and regulations, undue preference and advantage in the handling of grain, grain products, and hay from Ohio and Mississippi River crossings and beyond to southeastern destinations, and thereby unjustly discriminate against complainants; and others similarly situated, in that Nashville is able to deliver grain and grain products in southeastern territory under such unduly preferential rates and privileges that cities within that territory can not enter into competition.

The practices of the carriers complained of are:

(a) The payment by the railway companies of elevation charges at Nashville.

(b) The application of the any-quantity rate on grain and grain products from Ohio and Mississippi River crossings and Nashville, and points related thereto, to southeastern destinations.

(c) What is known as the rebilling or reshipping privilege at Nashville, with its incidents.

The Nashville Grain Exchange and the Nashville Board of Trade have intervened in this case in support of the retention at Nashville of these privileges.

ELEVATOR ALLOWANCE.

In connection with the reshipping of grain at Nashville, there is an allowance of three-fourths of a cent per 100 pounds by the railroad companies in payment for so-called elevation. The record shows that the practice at Nashville is to pay this allowance not only for elevation, but in effect for unloading the grain in such manner as may be most convenient for the dealer. The latter is paid this allowance for grain unloaded or sacked at his store or warehouse, irrespective of whether there is any elevation involved or whether the sacking is done by hand or by machinery, when the shipment moves out of Nashville.

The present adjustment of defendants' rates from Ohio and Mississippi River crossings to points of ultimate destination in the Southeast is made up of a combination of the through rate from the crossings to a jobbing point, such as Atlanta, plus the local from Atlanta. To certain circumscribed territory a dealer at the Georgia jobbing point can purchase a car of grain at a crossing point, bring it to Atlanta and ship it on to his customer at the same through rate as would be applied to a similar shipment by a dealer at a crossing point, or at Nashville. This equality in cost, however, relates only to the transportation charges, and is also restricted to a comparatively limited number of points. It would be impracticable for an Atlanta dealer to send a car through even to these points without stopping it at Atlanta for the purpose of inspection, sacking, etc., and it is partly in connection with certain incidental charges that he is placed at a disadvantage with a crossing point or Nashville. The Atlanta dealer does not receive any elevation allowance as does the Nashville dealer, and in addition, after unloading the car at his own expense, is required to pay certain switching charges.

Elevation allowances such as are paid at Nashville have been considered by the Commission on several occasions and we have found that there was no way of controlling the evils and irregularities necessarily accompanying such allowances, and for that reason they have been condemned. *Nebraska-Iowa Grain Co. v. U. P. R. R. Co.*, 15 I. C. C. Rep., 90; *Traffic Bureau Merchants' Exchange v. C., B. & Q. R. R. Co.*, 14 I. C. C. Rep., 317. It does not appear that the practice as carried on at Nashville is different in any essential particular from that which we held to be illegal in the cases just referred to, and it can not be doubted that it constitutes an unlawful discrimination against the complainants, who are compelled to perform a similar service at their own expense. An order will therefore be issued prohibiting the carriers from further paying this so-called elevator allowance.

ANY-QUANTITY RATE.

It appears from the record that throughout the country generally a different rate is applied on carloads from that applied on less than carloads in the transportation of traffic of the character involved in this complaint. There is an exception to this in what is known as Southern Classification territory, where the any-quantity rate prevails. Even in this territory a differential is in effect in Mississippi and Tennessee and parts of Alabama, and in Georgia on the Western & Atlantic Railroad north of Atlanta. However, the carriers intend that these exceptions are due to competitive conditions. Complainants request the Commission to order a differential to carloads and less than carloads on this traffic to southeastern

territory, on the ground that the carload shipper is overcharged because he gets less service than and pays the same money as the man who ships in less-than-carload lots; and that this violates the primary object sought to be obtained by the interstate-commerce act; that is, equality of treatment to all shippers. This feature of the complaint is not directed against Nashville alone, but is of broader scope, and includes all movements of grain through Ohio and Mississippi River crossings to points in southeastern territory.

At the hearing considerable testimony was taken to prove that the handling of traffic in less-than-carload lots was more expensive to the carrier than handling it in carloads. Defendants admit the general truth of this proposition. However, while the Commission will take notice of this fact it must also be borne in mind that the comparative cost of services to carriers can not be made the sole basis of rate making. *Planters' Compress Company v. C. C. C. & St. L. Ry. Co.*, 11 I. C. C. Rep., 382, 405; *I. C. C. v. C. G. W. Ry. Co.*, 141 Fed. Rep., 1003, and cases there cited.

The matter of establishing this differential has been agitated for a long time throughout southeastern territory. The carriers at one time favorably considered putting it into effect, and did actually do so for a short period, but it was discontinued for the reason that the state commissions in several of the Southern States require the maintenance of the any-quantity rate, and therefore it was impracticable to continue a differential between carload and less-than-carload shipments of interstate traffic. The sole contention of the carriers with respect to this feature of the complaint is its impracticability, and in this connection an illustration was given to show that the adoption of a differential on interstate traffic would result in increasing the rate on such shipments in less than carloads without a corresponding increase on intrastate less-than-carload shipments as long as the state commissions require the any-quantity rate on intrastate shipments. The differential would thus discontinue the uniform application of rates to both interstate and intrastate shipments. Less-than-carload shipments from point to point in a state would continue to move on the same rates as carloads. When a state line was crossed and the increased rate applied on the less-than-carload shipments, there would be an increase on such shipments sufficient to absolutely confine each state's business within its own border; and thus the interstate jobber would be eliminated in favor of the intrastate jobber.

There are, however, other and graver considerations with respect to this matter which exercise a compelling force upon the Commission. It is true the Commission has held that differentiation *by the carriers* of carloads from less than carloads in the application of rates

may be warranted under certain conditions. Here, however, we are asked to enter an affirmative order establishing a differential. What would be the effect upon all the business interests involved in this traffic should the Commission take such action? No doubt its effect upon the jobbers at southeastern points would be beneficial; traffic would move into the Southeast in such manner as to give the longest possible haul in carloads to the local dealers, who, securing these long hauls at carload rates, would be the beneficiaries. Other classes who would be affected by the change would be the small dealers and consumers, and it appears that the necessary operation of such a change would be to cut off these classes from purchasing in small quantities at Nashville and Ohio River points and compel them to deal with jobbers in their immediate vicinity, who would purchase in large enough quantities to secure the benefits of the lower rates on the long carload haul from the Ohio River and Nashville.

The entire record points to the fact that a differential on this traffic would have the effect of enhancing the price of these products to the consumer. The position taken by the railroads is that they have no objection to the establishment of a differential if a practical way can be found of accomplishing it, and provided the differential is brought about by an advance in the less-than-carload rates. It further appears that heretofore when this matter was agitated certain of the defendants considered it advisable to leave it to the Commission to say whether or not there should be a differential, always upon the assumption that this would be effected by an increase of the less-than-carload rates rather than by reductions of carload rates. Yet the carriers at that time admitted that they could not undertake to advance the less-than-carload rates primarily because such action would create the anomaly in the application of interstate and intrastate rates to which we have already alluded.

The record shows that consumers are now able to buy, and do buy, as cheaply in Nashville and at the river crossings as can the dealers in Atlanta; that the establishment of this differential would concentrate business at southeastern points; and it might reasonably be concluded from this that through the changes which this differential would bring about there would frequently be interposed between the consumer and his supply the profit of one or more middlemen, unless the retailer or consumer continued to buy at the larger markets, in which case he would frequently be compelled to pay the higher rate to be applied under the proposed adjustment on less-than-carload shipments.

From the facts appearing, it is clear that if a differential on this traffic is ordered, an effort will be made to maintain the present rates upon carload shipments, and a higher rate will be made to

apply on less-than-carload shipments. In the event such a readjustment should be upheld the cost to the retailer and consumer would necessarily be increased.

The any-quantity rate is paid indiscriminately by all shippers in this section, and therefore there can be no valid claim of unjust discrimination between localities, nor do we understand that complainants make any such allegation. On the other hand, it is nowhere stated that the any-quantity rate is *per se* unreasonable. All that complainants are contending for is a differential, whether the result be an advance or a reduction of the present rates. Complainants assert that they have an inherent right to the jobbing business throughout the territory adjacent, or, as they say, "naturally tributary," to them. As one witness stated it, "the territory contiguous to Augusta belongs to Augusta, and Augusta ought to have it, and I don't think Savannah, Macon, Atlanta, or Nashville has any right to it."

A railroad can not be compelled, as prayed in this case, or even permitted to adopt a system of rate making which enables a large dealer to drive a smaller dealer out of the market. We must have some other motive upon which to act in a matter of this kind than that the trade of a particular community is a vested right belonging to any particular class in that community. We are not permitted so to narrow our view of all the interests involved as to look only to the interests of a particular class in the community, and this for the sole purpose of vesting in that class what they claim to be their inherent rights, more especially when the enjoyment thereof is to be at the expense of the community at large.

The effect of an order prescribing a differential on less-than-carload quantities would be to place a tax on retailers and consumers in order that jobbers in this southeastern territory might realize a profit in competition with Nashville jobbers. If it were merely a question of adjusting the equities between the jobbers of Nashville and complainants, this matter would be greatly simplified, but our duty requires that we consider every interest which might be affected by our order, and where it seems that action on our part would have a tendency to adversely affect the interests of the section as a whole, we are not justified in granting the relief prayed for by a comparatively small class, as in the case before us.

REBILLING OR RESHIPPING.

Under the rebilling or reshipping privilege accorded at Nashville on shipments of grain, grain products, and hay from Ohio and Mississippi River crossings to points in the southeast the through rates from the crossings to ultimate destinations are applied. Shipments of grain from the crossings move into Nashville, where they are unloaded,

elevated, or sacked, and at any time within six months they are re-shipped on to points in the southeast. The net freight charge for the entire movement is based on the through rate from the crossings to final destination. A shipment moving from Evansville to Atlanta via Nashville pays the local 10-cent rate to Nashville, and the local rate of 17 cents, Nashville to Atlanta, or a total of 27 cents. As the through rate from Evansville to Atlanta is 24 cents, the 3 cents representing the difference between such through rate and the combination based on Nashville is paid back to the shipper through the claims department of the railroad company. When the shipper desires to reship at Nashville he takes the expense bill, covering the inbound movement, to the agent of the carrier, and the outbound shipments are charged against that expense bill; he thereupon gets a bill of lading showing the origin of the property at Evansville. This is the practice followed by the Louisville & Nashville, and the Nashville, Chattanooga & St. Louis employs a substantially similar practice, the net result of which is to apply the through rate via Nashville from the river crossings to final destination.

It is claimed by defendants that reshipping at Nashville was inaugurated many years ago for the purpose of protecting the revenues of the Louisville & Nashville Railroad, the Nashville & Northwestern, and the Nashville, Chattanooga & St. Louis Railway, against the competition of boats on the Cumberland River; that the location of Nashville on the Cumberland River, a navigable stream, was sufficient to establish not only a basis of rates from the Ohio and Mississippi River crossings to Nashville and southeastern territory, but also to establish the custom of reshipping at Nashville; that the original route to the southeast consisted of boats on the Cumberland River to Nashville and the Nashville, Chattanooga & St. Louis Railway from there on. It therefore became necessary, in order to protect the revenues of the rail carriers, to either establish very low rates from Ohio River crossings to Nashville proper, or to establish reshipping arrangements at Nashville to southeastern points. By taking the latter course there was accomplished the double purpose of securing the movement of traffic destined to the southeast in competition with boats on the Cumberland River, and of protecting the revenues of the rail lines on traffic destined to Nashville proper.

The record shows that less than 1,000,000 bushels of grain were transported from Ohio and Mississippi river crossings via boat to Nashville at rates ranging from 7 to 9 cents per hundred pounds during the past season, but it was asserted that if a rate of 10 cents per hundred pounds were maintained by the rail carriers from the Ohio River to Nashville there would spring up sufficient boat tonnage to handle the entire grain traffic from the Ohio River into Nashville, destined to

southeastern territory. Of course this grain handled into Nashville by boat does not have the benefit of the reshipping privilege.

The complaint is that this practice of reshipping constitutes an illegal preference in favor of dealers in hay, grain, and grain products at Nashville, and against such dealers in the southeast; and furthermore that reshipping is a device by which less than the lawful rate is paid.

Atlanta dealers are at a disadvantage when it comes to engaging in business with such points as Griffin and Newnan, Ga. The through rate from Louisville to Griffin is 29 cents per 100 pounds, while the rate to Atlanta plus the rate to Griffin is 32 cents per 100 pounds, so that if the Atlanta dealer wishes to keep the grain over in Atlanta for the purpose of inspection, weighing, sacking, etc., he is at a disadvantage of 3 cents per 100 pounds. Griffin is 43 miles south of or beyond Atlanta. The defendants claim that in cases where this cheaper rate is applicable the points that get the benefit of it have been made junction or common points by either the state railway commission or the Interstate Commerce Commission. It is not seriously urged by complainants that this adjustment is unduly preferential to these junction points or that it arose out of any other cause than advantages of location. We do not deem it necessary to enter upon any further discussion of this phase of the case.

Witnesses for complainants refer to a privilege given to shippers at Nashville of granting them ten days' free storage, and it was asserted that if grain was moved out within ten days no charge was made for storage. The defendants deny that they permit any such arrangement with shippers at Nashville, and assert that they require the discharge of cars at Nashville just the same as they do at Atlanta and other points.

The defendants assert that Nashville does not compete with Atlanta and similar points, but being a primary grain market, competes with similar markets, such as Cairo, Evansville, and Louisville. There is much difference of opinion as to what constitutes a primary grain market.

It is maintained by defendants that there is a difference between the circumstances and conditions surrounding this traffic at Nashville, and at Atlanta and other southeastern points; that since the early days of railroads Nashville has been the gateway through which this traffic has moved into the southeast, and her location on the Cumberland River contributed to the establishment of this gateway; moreover, that Nashville is located adjacent to a grain-growing section.

It was also contended by defendants that the practice of reshipping, as carried on at Nashville, prevails to a great extent throughout

the country in connection with the transportation of grain through so-called primary grain markets. Defendants' witnesses, however, were unable to give a single instance where the conditions are the same as at Nashville with respect to the practice of reshipping or rebilling. It is true the cities located at the river crossings are able to avail themselves of the privilege of elevating grain and subsequently reshipping it on to destination points in the southeast without any increase in the transportation charge from the point of origin to point of destination. This is not due, however, to any privilege of reshipping or rebilling granted to these points, but is possible by reason of the fact that rates from points of origin to points of destination are made up of a combination based on the river. One witness did state with regard to the movement of grain into the southeast from a certain section of Illinois that the carriers shrink the rate south of Louisville 2 cents in order to equalize the rates upon similar movements through Cairo. We shall, however, confine ourselves to a discussion of the practices and privileges at Nashville and complained of in this case.

It is contended by defendants that rebilling or reshipping is on the same basis as milling in transit and similar privileges. There is no complaint before us in this case against milling in transit, but it appears from the record that the privilege of milling in transit is accorded uniformly throughout the southeastern territory and is in no sense applied to Nashville or any other particular point alone.

We are not convinced that the circumstances and conditions under which the reshipping privilege is accorded at Nashville are so dissimilar from those obtaining at the other points involved in this traffic as to justify giving it our sanction on that ground. However, there are other aspects independent of this which lead us to regard this privilege with disfavor.

Illustrating the second feature of the complaint as to the alleged illegality of this privilege, the following example is given: A Nashville dealer buys 2 cars of grain, 1 at Memphis and 1 at Louisville. He pays, up to Nashville on a Memphis car, 11 cents per 100 pounds and on the Louisville car 10 cents. Should this Memphis car burn, after being put in the warehouse, or be sold at Nashville, he would have two expense bills and one car of grain. Should he sell a car at Atlanta, the Nashville merchant would naturally use the Memphis bill which shows a payment of 11 cents, paying the balance of the through rate from Memphis to Atlanta of 9 cents. He has, therefore, shipped the Louisville car to Atlanta for a total of 19 cents, when the through rate from Louisville to Atlanta is 24 cents and the combination of locals 27 cents. It is further alleged that as considerable grain is consumed in Nashville there is always a surplus of expense bills which may be manipulated in order to secure a cheaper rate than that pro-

vided in the tariffs. In answer to this defendants say that the operation of the reshipping privilege, as described in this example, is limited by the fact that the Memphis car of grain is worth more to the dealer at Nashville than the Louisville car, by reason of the difference in the freight rate, and, therefore, Memphis grain is not sold at Nashville proper, but is all reshipped to the southeast. It is to be noted that the tariffs of the carriers contain a rule which prohibits trading in expense bills, and it is hardly probable that such a rule would appear if the manipulation of expense bills is impossible, as contended by defendants.

While this manipulation of expense bills may not be practiced to the extent apprehended by complainants, we may remark that prohibitions of law are not invariably directed against illegal acts because they may be numerous; a statute may be considered equally necessary by the legislature to prevent sporadic or isolated acts in contravention of public policy. A practice or privilege which permits the movement of a single shipment at less than the rate lawfully applicable to such movement is one which the Commission has, under the law, no alternative but to condemn.

In considering a practice at Kansas City similar to the one under consideration (*Alleged Unlawful Rates and Practices*, 7 I. C. C. Rep., 240), it was found that the practice of handling grain in connection with this privilege was manifestly open to many abuses. On several occasions the Commission has considered practices of a more or less similar nature and has uniformly regarded them with disfavor. In the case above referred to the finding was based upon the fact that the movement upon which the through rate was applied was in no essential sense a through movement, and we find the same to be true with respect to rebilling or reshipping at Nashville. The grain upon its arrival at Nashville loses its identity, and in every respect may be regarded as a local shipment. There is hardly a single incident of a through shipment involved in the transaction—the bill of lading is local, the rate is local, and there is nothing upon paper connected with the transaction indicating that the grain is to be carried beyond Nashville. If it is the intention to carry it beyond, there is no present idea as to the point of destination.

We are of the opinion that the reshipping or rebilling the application of rates thereunder obtaining at Nashville device by means of which grain, grain products, and hay are reported at less than the tariff rate applicable thereto; and it gives to Nashville undue and illegal preference and advantage and subjects other points in the southeast to unjust and prejudice and disadvantage. An order will be entered in accordance with the views herein expressed.

No. 1951.

ALPHONS CUSTODIS CHIMNEY CONSTRUCTION
COMPANY

v.

VANDALIA RAILROAD COMPANY ET AL.

Submitted March 30, 1909. Decided June 28, 1909.

Defendants' rates charged for the transportation of three carloads of stack chimney brick from Brazil, Ind., to Minnesota Transfer, Minn., found unreasonable to the extent that they exceeded the combination of local rates, and complainant awarded reparation on that basis.

R. B. Hepner for complainant.

John G. Williams for Vandalia Railroad Company.

George W. Seevers for Minneapolis & St. Louis Railroad Company and Iowa Central Railway Company.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

The complainant company assails as unreasonable and unjust the charges collected by the defendants, on the basis of 19 cents per 100 pounds, on two carloads of stack chimney brick shipped from Brazil, in the state of Indiana, to Minnesota Transfer, and charges collected by them, at the rate of 23½ cents per 100 pounds, on one other carload of the same commodity moving between the same points. The shipments were made during September and October, 1906, and the claim for reparation was first filed informally with the Commission on February 25, 1908.

The three carloads aggregated 203,300 pounds in weight and the charges demanded and collected by the defendants amounted to \$427.04. There was no authority in the tariffs of the defendants for assessing the 19-cent rate on any of these shipments; the lawful rate then in effect was the joint through sixth class rate of 23½ cents per 100 pounds. The charges properly assessable, therefore, were \$477.76, and the amount actually collected left an undercharge on two carloads of \$50.72.

Under date of August 6, 1906, the defendant, the Vandalia Railroad Company, which was the initial carrier in these movements, admitted to the complainant that the rate on stack chimney brick between the points in question ought to be 13 cents per 100 pounds, and agreed to publish such a commodity rate in place of the class rate of $23\frac{1}{2}$ cents, then in effect. It promised this readjustment because the local rates between the points in question, based on Arthur, in the state of Illinois, made a combination rate of \$2.60 a ton, which is equivalent to a rate of 13 cents per 100 pounds. The defendants made good the promise of the Vandalia by subsequently establishing a joint through rate of \$2.60 a ton. The necessary supplement was filed on December 10, 1906, and, because of the existence of a lower combination of local rates, was permitted to be made effective on one day's notice. This, however, was too late to make it applicable on these movements, and the charges were therefore collected at the class rate of $23\frac{1}{2}$ cents. The new joint through rate remained in effect until June 3, 1908, when it was canceled and a joint through rate of \$2.35 was made effective. This rate is still in force.

As the joint through sixth class rate of $23\frac{1}{2}$ cents in effect at the time the shipments were made was in excess of the sum of the locals it was subject to a presumption of unreasonableness which was not overcome by any testimony of record. None of the defendants, in fact, appeared at the hearing, although duly notified. Moreover, on the informal presentation of the petitioner's claim the Vandalia admitted the unreasonableness of the charges collected and asked for authority to make a refund on the basis of 13 cents, the sum of the local rates then in effect. In their answers to the formal complaint the other two defendants take substantially that view of the class rate of $23\frac{1}{2}$ cents as applied to this commodity between the points in question; and they express the opinion that 13 cents would have been a reasonable rate. We therefore find that the $23\frac{1}{2}$ -cent rate was an unreasonable rate to the extent that it exceeded a charge of 13 cents per 100 pounds, and that the complainant is entitled to reparation on that basis with interest. But in view of the fact that the joint through rate of \$2.60 per ton remained in effect from December 11, 1906, until June 3, 1908, and that since that time there has been in effect a joint through rate of \$2.35 per ton, no order controlling the rate for the future seems to be required.

An order will be entered in accordance with these findings.

**CASES DISPOSED OF BY THE COMMISSION WITHOUT PRINTED
REPORT DURING THE TIME COVERED BY THIS VOLUME.**

1052. **CAMPBELL CREEK COAL COMPANY ET AL. v. KANAWHA & MICHIGAN RAILWAY COMPANY.**—Car distribution at mines of complainants. *Samuel O. Bayless* for complainants. *James H. Hoyt* and *Doyle & Lewis* for defendant. June 22, 1909. Dismissed on motion of complainants.

1124. **MONTGOMERY FREIGHT BUREAU v. LOUISVILLE & NASHVILLE RAILROAD COMPANY.**—Rates on phosphate rock from Mount Pleasant, Tenn., to Montgomery, Ala. *H. S. Kealhofer* for complainant. *Ed. Baxter* for defendant. June 8, 1909. Dismissed on motion of complainant.

1140. **BERCKMAN BROS. v. GEORGIA RAILROAD COMPANY ET AL.**—Refrigeration and rates on peaches from Mayfield, Ga., to Boston, Mass., and other northern points. *A. H. Cox* and *Dean & Dean* for complainant. *E. D. Robbins*, *Ed. Baxter*, *John G. Wilson*, *Norren D. Chase*, *R. Walton Moore*, *George Stuart Patterson*, *George V. Massey*, and *Claudian B. Northrop* for defendants. June 28, 1909. Dismissed on motion of complainant.

1143. **MILLER & DEAN v. WESTERN & ATLANTIC RAILROAD COMPANY ET AL.**—Refrigeration and rates on peaches from Halls Station, Ga., to points north. *Dean & Dean* for complainant. *Edward D. Robbins*, *George Stuart Patterson*, *George V. Massey*, *Ed. Baxter*, *John G. Wilson*, and *Claudian B. Northrop* for defendants. June 28, 1909. Dismissed on motion of complainant.

1144. **G. H. MILLER & SON v. WESTERN & ATLANTIC RAILROAD COMPANY ET AL.**—Refrigeration and rates on peaches from points in Georgia to points north. *Dean & Dean* for complainant. *Edward D. Robbins*, *George Stuart Patterson*, *George V. Massey*, *Ed. Baxter*, *John G. Wilson*, and *Claudian B. Northrop* for defendants. June 28, 1909. Dismissed on motion of complainant.

1145. **MILLER & WOOD v. CENTRAL OF GEORGIA RAILWAY COMPANY ET AL.**—Refrigeration and rates on peaches from Lindale, Ga., to points north. *Dean & Dean* for complainant. *Edward D. Robbins*, *George V. Massey*, *George Stuart Patterson*, *Ed. Baxter*, *John G. Wilson*, and *Claudian B. Northrop* for defendants. June 28, 1909. Dismissed on motion of complainant.

1146. MILLER ORCHARD COMPANY *v.* CENTRAL OF GEORGIA RAILWAY COMPANY ET AL.—Refrigeration and rates on peaches from Sprites, Ga., to points north. *Dean & Dean* for complainant. *Edward D. Robbins, George Stuart Patterson, George V. Massey, Ed. Baxter, Claudian B. Northrop, and John G. Wilson* for defendants. June 28, 1909. Dismissed on motion of complainant.

1147. W. P. SIMPSON *v.* NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY COMPANY ET AL.—Refrigeration and rates on peaches from Rome, Ga., to points north. *Dean & Dean* for complainant. *Edward D. Robbins, George Stuart Patterson, George V. Massey, Ed. Baxter, John G. Wilson, and Claudian B. Northrop* for defendants. June 28, 1909. Dismissed on motion of complainant.

1148. E. J. WILLINGHAM *v.* CENTRAL OF GEORGIA RAILWAY COMPANY ET AL.—Refrigeration and rates on peaches from Marshallville, Ga., to points north. *Dean & Dean* for complainant. *Edward D. Robbins, George Stuart Patterson, George V. Massey, Ed. Baxter, Claudian B. Northrop, and John G. Wilson* for defendants. June 28, 1909. Dismissed on motion of complainant.

1149. WILLINGHAM FRUIT COMPANY *v.* CENTRAL OF GEORGIA RAILWAY COMPANY ET AL.—Refrigeration and rates on peaches from Marshallville, Ga., to points north. *Dean & Dean* for complainant. *Edward D. Robbins, George Stuart Patterson, George V. Massey, Ed. Baxter, Claudian B. Northrop, and John G. Wilson* for defendants. June 28, 1909. Dismissed on motion of complainant.

1177. JEWETT BROS. & JEWETT *v.* CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.—Rates to Sioux Falls from Lake Michigan points as compared with rates to Sioux City. *Bailey & Voorhees* and *A. B. Kittredge* for complainant. *Milchrist & Scott* for intervenor. *Thomas Wilson, Blewett Lee, J. M. Dickinson, E. B. Peirce, S. A. Lynde, and H. E. Pierpont* for defendants. April 13, 1909. Dismissed on motion of complainant.

1233. GEORGE W. CLARKE *v.* ILLINOIS CENTRAL RAILROAD COMPANY.—Rates on potatoes from Sioux Falls, S. Dak., to Brookhaven, Miss. *George W. Clarke* for self. *Ed. Baxter* for defendant. June 14, 1909. Reparation awarded.

1479. PAXTON & VIERLING IRON WORKS *v.* CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY ET AL.—Rates on structural iron from Omaha, Nebr., to Lead, Deadwood, and Hot Springs, S. Dak. *Lysle I. Abbott* and *R. Vierling* for complainant. *Hale Holden, James E. Kelby, S. A. Lynde, H. F. Rose, and B. T. White* for defendants. June 11, 1909. Dismissed on motion of complainant.

1520. HARVEST KING DISTILLING COMPANY *v.* ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.—Refusal to accept liquors from Kansas City, Mo., to points in Oklahoma, unless charges were

prepaid. *J. M. Schoenheit* for complainant. *Robert Dunlap, T. J. Norton, James L. Coleman, E. B. Peirce, S. W. Moore, F. H. Wood, Martin L. Clardy, and James C. Jeffery* for defendants. June 7, 1909. Dismissed for want of prosecution

1577. *THE HEISLER COMPANY v. THE TOLEDO & OHIO CENTRAL RAILWAY COMPANY*.—Rates on pumping machinery from St. Marys, Ohio, to Waukegan, Ill. *Anthony Culliton* for complainant. *F. C. Lewis* for defendant. April 5, 1909. Transferred to Special Reparation Docket.

1599. *SWIFT FERTILIZER WORKS v. ATLANTIC COAST LINE RAILROAD COMPANY*.—Demurrage on thirty-three cars of fertilizer material at Wilmington, N. C., from Charleston, S. C. *Henry Veeder* and *Arthur F. Evans* for complainant. *George B. Elliot* for defendant. June 7, 1909. Dismissed on motion of complainant.

1654. *TYGARTS RIVER COAL COMPANY v. BALTIMORE & OHIO RAILROAD COMPANY ET AL.*—Rates on coal from Arden, W. Va., via Maybrook, N. Y., to Lee, Mass. *A. Rankin* for complainant. *John J. Beanic, Charles Heebner, Jackson E. Reynolds, E. G. Buckland, J. S. Hendricks, and William Ainsworth Parker* for defendants. March 2, 1909. Reparation and establishment of rates on coal from Arden, W. Va., to Lee, Mass., not to exceed those in effect from Arden to all other points on the Berkshire Division of the N. Y., N. H. & H. R. R. Co.

1792. *SWIFT & COMPANY v. CHICAGO & ALTON RAILROAD COMPANY*.—Charges on water tank and food in carload of live poultry from Higginsville, Mo., to Chicago, Ill. *Albert H. and Henry Veeder, M. Weigle, and A. R. Fay* for complainant. *C. A. King, Winston, Payne, Strawn & Shaw, and Blackburn Esterline* for defendants. May 10, 1909. Dismissed on motion of complainant.

1799. *ROPER LUMBER-CEDAR COMPANY v. CHICAGO & NORTHWESTERN RAILWAY COMPANY ET AL.*—Rates on lumber from Michigan points to various points of destination. *Hunter & Wormelle* and *F. J. Trudell* for complainant. *S. A. Lynde* for C. & N. W. Ry. Co. June 14, 1909. Dismissed on motion of complainant.

1927. *M. F. DICUS v. PITTSBURG, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY ET AL.*—Rates on earthenware closet bowls from Wheeling, W. Va., to Douglas, Ariz. *Cass & Sames* for complainant. *Hawkins & Franklin, A. P. Burguin, C. B. Fernald, Robert Dunlap, T. J. Norton, and James L. Coleman* for defendants. June 8, 1909. Dismissed on motion of complainant.

1939. *PAOLA REFINING COMPANY v. ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY*.—Rates on oil from Paola, Kans., to Springfield and Joplin, Mo. *J. M. Swift* for complainant. *E. B. Peirce* for defendant. April 13, 1909. Dismissed on motion of complainant.

1956. PAOLA REFINING COMPANY *v.* ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY ET AL.—Rates on oil from Paola, Kans., to Hartford, Ark., via Tulsa, Okla. *J. M. Swift* for complainant. *Edgar A. de Meules* and *E. B. Peirce* for defendants. April 13, 1909. Dismissed on motion of complainant.

2009. STANDARD ASPHALT & RUBBER COMPANY *v.* MISSOURI PACIFIC RAILWAY COMPANY ET AL.—Rates on asphalt from Independence, Kans., to Pine Bluff, Ark., reconsigned to Springfield, Mo. *J. M. Swift* for complainant. *Martin L. Clardy* and *James C. Jeffery* for defendants. April 13, 1909. Dismissed on motion of complainant.

2021. C. W. COCHRAN LUMBER COMPANY *v.* MOBILE & OHIO RAILROAD COMPANY ET AL.—Rates on lumber from Bodga, Miss., to Cincinnati, Ohio. *R. W. Harris* for complainant. *A. P. Burgwin*, *C. B. Fernald*, and *Sidney F. Andrews* for defendants. June 8, 1909. Dismissed on motion of complainant.

2058. SCHUSTER BREWING COMPANY *v.* CHICAGO & NORTHWESTERN RAILWAY COMPANY ET AL.—Return rates on empty beer bottles from Newcastle, Ind., to Rochester, Minn. *G. M. Stephen* for complainant. *S. A. Lynde* and *C. B. Fernald* for defendants. June 8, 1909. Dismissed on motion of complainant.

2113. COPPER QUEEN CONSOLIDATED MINING COMPANY *v.* BALTIMORE & OHIO RAILROAD COMPANY ET AL.—Rates on coke from West Virginia points to El Paso, Tex., via Kankakee, Ill. *George Notman* for complainant. *Hawkins & Franklin*, *W. A. Parker*, *E. B. Peirce*, *O. E. Butterfield*, and *Clyde Brown* for defendants. June 22, 1909. Dismissed on motion of complainant.

2116. COPPER QUEEN CONSOLIDATED MINING COMPANY *v.* BALTIMORE & OHIO RAILROAD COMPANY ET AL.—Rates on coke from West Virginia and Pennsylvania points to Douglas, Ariz. *George Notman* for complainant. *Hawkins & Franklin*, *W. A. Parker*, *O. E. Butterfield*, *Clyde Brown*, and *E. B. Peirce* for defendants. June 22, 1909. Dismissed on motion of complainant.

2118. DETROIT COPPER MINING COMPANY OF ARIZONA *v.* BALTIMORE & OHIO RAILROAD COMPANY ET AL.—Rates on coke from West Virginia points to Morenci, Ariz. *George Notman* for complainant. *A. T. Thompson*, *Hawkins & Franklin*, *W. A. Parker*, *O. E. Butterfield*, *Clyde Brown*, and *E. B. Peirce* for defendants. June 22, 1909. Dismissed on motion of complainant.

2130. OLD DOMINION COPPER MINING & SMELTING COMPANY *v.* PENNSYLVANIA COMPANY ET AL.—Rates on coke from Pennsylvania points to Globe, Ariz. *Wm. Crane* for complainant. *Blewett Lee*, *W. Baxter*, *R. Walton Moore*, *George Stuart Patterson*, *F. C. Dillard*, *F. Dunne*, *C. W. Durbrow*, *W. F. Herrin*, *J. P. Blair*, and *Baker*, *its*, *Parker & Garwood* for defendants. June 22, 1909. Dismissed on motion of complainant.

2133. COPPER QUEEN CONSOLIDATED MINING COMPANY *v.* PITTSBURG & LAKE ERIE RAILROAD COMPANY ET AL.—Rates on coke from Newell scales, Pa., to Douglas, Ariz. *George Notman* for complainant. *Hawkins & Franklin, Robert Dunlap, T. J. Norton, H. A. Taylor, and H. Murray Andrews* for defendants. June 22, 1909. Dismissed on motion of complainant.

2134. COPPER QUEEN CONSOLIDATED MINING COMPANY *v.* PITTSBURG & LAKE ERIE RAILROAD COMPANY ET AL.—Rates on coke from Newell's Scales and Dickerson's Scales, Pa., to Douglas, Ariz. *George Notman* for complainant. *Hawkins & Franklin, Robert Dunlap, T. J. Norton, H. A. Taylor, and H. Murray Andrews* for defendants. June 22, 1909. Dismissed on motion of complainant.

2135. COPPER QUEEN CONSOLIDATED MINING COMPANY *v.* PITTSBURG & LAKE ERIE RAILROAD COMPANY ET AL.—Rates on coke from Newell's Scales, Pa., and Dickerson's Scales, Pa., to Douglas, Ariz. *George Notman* for complainant. *Hawkins & Franklin, H. A. Taylor, H. Murray Andrews, and E. B. Peirce* for defendants. June 22, 1909. Dismissed on motion of complainant.

2136. OLD DOMINION COPPER MINING & SMELTING COMPANY *v.* PITTSBURG & LAKE ERIE RAILROAD COMPANY ET AL.—Rates on coke from Newell's Scales, Pa., to Globe, Ariz. *W. A. Crane* for complainant. *Ed. Baxter, R. Walton Moore, F. C. Dillard, P. F. Dunne, C. W. Durbrow, W. F. Herrin, J. P. Blair, and Baker, Botts, Parker & Garwood* for defendants. June 22, 1909. Dismissed on motion of complainant.

2137. OLD DOMINION COPPER MINING & SMELTING COMPANY *v.* PITTSBURG & LAKE ERIE RAILROAD COMPANY ET AL.—Rates on coke from Newell's Scales, Pa., to Globe, Ariz. *W. A. Crane* for complainant. *Hawkins & Franklin, F. C. Dillard, P. F. Dunne, C. W. Durbrow, William F. Herrin, H. A. Taylor, H. Murray Andrews, Eugene S. Ives, E. B. Peirce, and Baker, Botts, Parker & Garwood* for defendants. June 22, 1909. Dismissed on motion of complainant.

2154. WHITE BROS. *v.* ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.—Rates on hardwood lumber from Gilmore, Ark., to San Francisco. *Lester G. Burnett and J. O. Bracken* for complainant. *Robert Dunlap, T. J. Norton, E. B. Peirce, and E. W. Camp* for defendants. June 14, 1909. Dismissed on motion of complainant.

2155. WHITE BROS. *v.* ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.—Rates on hardwood lumber from Jonesboro, Ark., to San Francisco. *J. O. Bracken and Lester G. Burnett* for complainant. *E. B. Peirce, Robert Dunlap, T. J. Norton, J. L. Coleman, and E. W. Camp* for defendants. June 14, 1909. Dismissed on motion of complainant.

2164. WHITE BROS. *v.* SOUTHERN PACIFIC COMPANY ET AL.—Rates on hardwood lumber from Shults, Ark., to San Francisco. *J. O.*

Bracken and Lester G. Burnett for complainant. *N. H. Loomis, F. C. Dillard, Howard Coles, P. F. Dunne, C. W. Durbrow, William F. Herrin, Martin L. Clardy, and James C. Jeffery* for defendants. June 14, 1909. Dismissed on motion of complainant.

2187. **BLUE LICK SPRINGS COMPANY v. LOUISVILLE & NASHVILLE RAILROAD COMPANY.**—Rates on glass bottles from Cincinnati, Ohio, to Carlisle, Ky. *Karl Van Slyck* for complainant. June 22, 1909. Dismissed on motion of complainant; complaint satisfied.

2191. **OLD DOMINION COPPER MINING & SMELTING COMPANY v. MONONGAHELA RAILROAD COMPANY ET AL.**—Rates on coke from points in Pennsylvania to Globe, Ariz. *W. A. Crane* for complainant. *Blewett Lee, George Stuart Patterson, F. C. Dillard, P. F. Dunne, C. W. Durbrow, William F. Herrin, William Ainsworth Parker, Ed. Baxter, R. Walton Moore, J. P. Blair, and Baker, Botts, Parker & Garwood* for defendants. June 22, 1909. Dismissed on motion of complainant.

2195. **WHITE BROS. v. SOUTHERN PACIFIC COMPANY ET AL.**—Rates on hardwood lumber from Portland, Ark., to San Francisco. *J. O. Bracken and Lester G. Burnett* for complainant. *E. L. Sargent, F. C. Dillard, P. F. Dunne, C. W. Durbrow, William F. Herrin, Martin L. Clardy, and James C. Jeffery* for defendants. June 14, 1909. Dismissed on motion of complainant.

2196. **AMERICAN-LA FRANCE FIRE ENGINE COMPANY v. CHICAGO & NORTHWESTERN RAILWAY COMPANY ET AL.**—Rates on steam fire engines from St. Paul, Minn., to Elmira, N. Y. *John B. Rose* for complainant. *S. A. Lynde, E. C. Clefton, O. E. Butterfield, and Clyde Brown* for defendants. May 26, 1909. Dismissed on motion of complainant.

2199. **JOHN W. ALDEN v. ADAMS EXPRESS COMPANY ET AL.**—Express rates on cake from points in Massachusetts to various New England points. *Edward S. and Leopold M. Goulston* for complainant. *T. B. Harrison, jr.,* for defendants. April 12, 1909. Discontinued on motion of complainant.

2213. **ACME CEMENT PLASTER COMPANY v. ALABAMA & VICKSBURG RAILWAY COMPANY ET AL.**—Rule as to marking shipments of empty bags. *John B. Daish* for complainant. *S. H. West, Roy F. Britton, Edward L. Upton, W. W. Walker, E. L. Sargent, F. C. Dillard, J. P. Blair, Alex St. Clair-Abrams, James Hagerman, Joseph M. Bryson, J. R. Rowland, Chester M. Dawes, P. L. Williams, George W. Seevers, Charles H. Sommer, F. R. Bolles, F. O. Becker, William Ellis, Charles W. Bunn, A. W. Houston, E. E. Whitted, Robert H. Widdecombe, W. R. Powe, Hawes & Pollte, Robert Dunlap, T. J. Norton, Ed Baxter, C. N. Burch, Sidney F. Andrews, A. G. Briggs, George W. Markham, R. A. Brown, J. G. Trimble, N. H. Loomis, Winston, Payne, Strawn & Shaw, W. E. Coman, W. W. Cotton,*

William R. Begg, Winter Wimberly, S. A. Lynde, S. W. Moore, Fred H. Wood, Thomas J. Freeman, Rosser & Brandon, E. S. Ives, Martin L. Clardy, James C. Jeffery, E. B. Peirce, Henry Rogers, and H. H. Raymond for defendants. April 22, 1909. Dismissed on motion of complainant.

2226. ALLEN & HIGGINS LUMBER COMPANY *v.* SOUTHERN PACIFIC COMPANY ET AL.—Rates on lumber from Helena, Ark., to San Francisco. *Lester G. Burnett* and *J. O. Bracken* for complainant. *E. N. Clark, E. L. Sargent, William F. Herrin, F. C. Dillard, P. F. Dunne, C. W. Durbrow, Martin L. Clardy, and James C. Jeffery* for defendants. June 14, 1909. Dismissed on motion of complainant.

2227. ALLEN & HIGGINS LUMBER COMPANY *v.* SOUTHERN PACIFIC COMPANY ET AL.—Rates on lumber from New Orleans to San Francisco. *Lester G. Burnett* and *J. O. Bracken* for complainant. *F. C. Dillard, J. P. Blair, P. F. Dunne, C. W. Durbrow, and William F. Herrin* for defendants. June 14, 1909. Dismissed on motion of complainant.

2228. ALLEN & HIGGINS LUMBER COMPANY *v.* SOUTHERN PACIFIC COMPANY ET AL.—Rates on oak lumber from Helena, Ark., to San Francisco. *Lester G. Burnett* and *J. O. Bracken* for complainant. *Charles N. Burch, C. L. Sivley, F. C. Dillard, P. F. Dunne, C. W. Durbrow, William F. Herrin, and J. P. Blair* for defendants. June 14, 1909. Dismissed on motion of complainant.

2232. ALLEN & HIGGINS LUMBER COMPANY *v.* SOUTHERN PACIFIC COMPANY ET AL.—Rates on oak lumber from English, Ark., to San Francisco. *Lester G. Burnett* and *J. O. Bracken* for complainant. *E. L. Sargent, F. C. Dillard, P. F. Dunne, C. W. Durbrow, William F. Herrin, S. H. West, and Roy F. Britton* for defendants. June 14, 1909. Dismissed on motion of complainant.

2255. WHITE BROS. *v.* SOUTHERN PACIFIC COMPANY ET AL.—Rates on oak lumber from Wilson's Mill Spur, La., to San Francisco. *Lester G. Burnett* and *J. O. Bracken* for complainant. *E. L. Sargent, F. C. Dillard, P. F. Dunne, C. W. Durbrow, William F. Herrin, and Baker, Botts, Parker & Garwood* for defendants. June 14, 1909. Dismissed on motion of complainant.

2256. WHITE BROS. *v.* SOUTHERN PACIFIC COMPANY ET AL.—Rates on hard wood lumber from Memphis, Tenn., to San Francisco. *J. O. Bracken* and *Lester G. Burnett* for complainant. *F. C. Dillard, J. P. Blair, P. F. Dunne, C. W. Durbrow, William F. Herrin, Baker, Botts, Parker & Garwood, Ed Baxter, R. Walton Moore, Charles N. Burch, and C. L. Sivley* for defendants. June 14, 1909. Dismissed on motion of complainant.

2265. ALLEN & HIGGINS LUMBER COMPANY *v.* ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.—Rates on oak lumber

from Shults, Ark., to San Francisco. *Lester G. Burnett* and *J. O. Bracken* for complainant. *Howard Coles, Robert Dunlap, T. J. Norton, Martin L. Clardy, James C. Jeffery, E. W. Camp, F. C. Dillard,* and *C. W. Durbrow* for defendants. June 14, 1909. Dismissed on motion of complainant.

2266. ALLEN & HIGGINS LUMBER COMPANY *v.* ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.—Rates on oak lumber from Memphis, Tenn., to San Francisco. *Lester G. Burnett* and *J. O. Bracken* for complainant. *Robert Dunlap, T. J. Norton, Martin L. Clardy, James C. Jeffery, E. W. Camp, F. C. Dillard,* and *C. W. Durbrow* for defendants. June 14, 1909. Dismissed on motion of complainant.

2289. C. C. FOLLMER & COMPANY *v.* GREAT NORTHERN RAILWAY COMPANY ET AL.—Misrouting carload of shingles from Superior, Wis., to Oblong, Ill. *C. C. Follmer* for complainant. *Blewett Lee* and *William R. Begg* for defendants. June 24, 1909. Reparation awarded under rule 70, Tariff Circular 15-A.

2311. WHITE BROS. *v.* SOUTHERN PACIFIC COMPANY ET AL.—Rates on oak lumber from Memphis, Tenn., to San Francisco. *J. O. Bracken* and *Lester G. Burnett* for complainant. *F. C. Dillard, J. P. Blair, Baker, Botts, Parker & Garwood, Charles N. Burch, C. L. Sivley, E. L. Sargent, P. F. Dunne, C. W. Durbrow, William F. Herrin, Martin L. Clardy,* and *James C. Jeffery* for defendants. June 14, 1909. Dismissed on motion of complainant.

2330. A. L. THOMAS *v.* CHICAGO & NORTHWESTERN RAILWAY COMPANY ET AL.—Rates on potatoes from Pensaukee, Oconto County, Wis., to Coalwood, Mich. *Sheridan & Evans* for complainant. *S. A. Lynde* and *William P. Belden* for defendants. June 22, 1909. Dismissed on motion of complainant.

2333. WHITE BROS. *v.* ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.—Rates on oak lumber from Lyon, Miss., to Oakland, Cal. *J. O. Bracken* and *Lester G. Burnett* for complainant. *Charles N. Burch, C. L. Sivley, Ed Barter, R. Walton Moore, Robert Dunlap, T. J. Norton, E. B. Peirce,* and *E. W. Camp* for defendants. June 14, 1909. Dismissed on motion of complainant.

2340. WHITE BROS. *v.* SOUTHERN PACIFIC COMPANY ET AL.—Rates on hardwood lumber from New Albany, Miss., to San Francisco. *J. O. Bracken* and *Lester G. Burnett* for complainant. *Hawkins & Franklin, Baker, Botts, Parker & Garwood, F. C. Dillard, E. B. Peirce, P. F. Dunne, C. W. Durbrow, Wm. F. Herrin,* and *E. W. Camp* for defendants. June 14, 1909. Dismissed on motion of complainant.

2346. WHITE BROS. *v.* ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.—Rates on oak lumber from Memphis, Tenn., to San

Francisco. *J. O. Bracken* and *Lester G. Burnett* for complainant. *Martin L. Clardy*, *James C. Jeffery*, *Robert Dunlap*, *T. J. Norton*, *James L. Coleman*, *E. W. Camp*, and *C. W. Durbrow* for defendants. June 14, 1909. Dismissed on motion of complainant.

2365. *WHITE BROS. v. SOUTHERN PACIFIC COMPANY ET AL.*—Rates on hardwood lumber from Hopkinsville, Ky., to San Francisco. *J. O. Bracken* and *Lester G. Burnett* for complainant. *F. C. Dillard*, *J. P. Blair*, *Baker*, *Botts*, *Parker & Garwood*, *P. F. Dunne*, *C. W. Durbrow*, *William F. Herrin*, and *Ed. Baxter* for defendants. June 14, 1909. Dismissed on motion of complainant.

2381. *CANANEA CONSOLIDATED COPPER COMPANY v. PENNSYLVANIA RAILROAD COMPANY ET AL.*—Rates on coke from Latrobe, Pa., to Cananea, Sonora, Mexico, via Chicago, Ill. *T. Evans* for complainant. *George Stuart Patterson*, *E. L. Sargent*, *Martin L. Clardy*, *James C. Jeffery*, and *Hawkins & Franklin* for defendants. June 24, 1909. Dismissed on motion of complainant.

2382. *CANANEA CONSOLIDATED COPPER COMPANY v. PENNSYLVANIA RAILROAD COMPANY ET AL.*—Rates on coke from West Brownsville Junction Scales, Pa., to Cananea, Sonora, Mexico, via Kankakee, Ill. *T. Evans* for complainant. *George Stuart Patterson*, *Hawkins & Franklin*, and *E. B. Peirce* for defendants. June 24, 1909. Dismissed on motion of complainant.

2392. *CANANEA CONSOLIDATED COPPER COMPANY v. BALTIMORE & OHIO RAILROAD COMPANY ET AL.*—Rates on coke from Chiefton and Riverdale, W. Va., to Cananea, Sonora, Mexico. *T. Evans* for complainant. *William Ainsworth Parker*, *E. L. Sargent*, *Martin L. Clardy*, *James C. Jeffery*, and *Hawkins & Franklin* for defendants. June 24, 1909. Dismissed on motion of complainant.

2458. *CANANEA CONSOLIDATED COPPER COMPANY v. PENNSYLVANIA RAILROAD COMPANY ET AL.*—Rates on coke from Latrobe and West Brownsville Junction Scales, Pa., to Cananea, Sonora, Mexico. *T. Evans* for complainant. *George Stuart Patterson*, *E. L. Sargent*, *Hawkins & Franklin*, *Martin L. Clardy*, and *James C. Jeffery* for defendants. June 24, 1909. Dismissed on motion of complainant.

2508. *CANANEA CONSOLIDATED COPPER COMPANY v. PENNSYLVANIA RAILROAD COMPANY ET AL.*—Rates on coke from West Brownsville Junction Scales, Pa., to Cananea, Sonora, Mexico. *T. Evans* for complainant. *George Stuart Patterson*, *Hawkins & Franklin*, *E. B. Peirce*, *A. G. Briggs*, and *George W. Markham* for defendants. June 24, 1909. Dismissed on motion of complainant.

2520. *CANANEA CONSOLIDATED COPPER COMPANY v. CHICAGO & ERIE RAILROAD COMPANY ET AL.*—Rates on coke from Newell's Scales, Pa., to Cananea, Sonora, Mexico. *T. Evans* for complainant.

Hawkins & Franklin, E. B. Peirce, H. A. Taylor, and H. Murray Andrews for defendants. June 24, 1909. Dismissed on motion of complainant.

2521. CANANEA CONSOLIDATED COPPER COMPANY *v.* BALTIMORE & OHIO RAILROAD COMPANY ET AL.—Rates on coke from Murray, W. Va., to Cananea, Sonora, Mexico. *T. Evans* for complainant. *E. L. Sargent, Hawkins & Franklin, Martin L. Clardy, James C. Jeffery, and William Ainsworth Parker* for defendants. June 24, 1909. Dismissed on motion of complainant.

2549. CANANEA CONSOLIDATED COPPER COMPANY *v.* PENNSYLVANIA RAILROAD COMPANY ET AL.—Rates on coke from Latrobe and Bradenville, Pa., to Cananea, Sonora, Mexico. *T. Evans* for complainant. *George Stuart Patterson, Hawkins & Franklin, and E. B. Peirce* for defendants. June 24, 1909. Dismissed on motion of complainant.

2550. CANANEA CONSOLIDATED COPPER COMPANY *v.* BALTIMORE & OHIO RAILROAD COMPANY ET AL.—Rates on coke from West Virginia points to Cananea, Sonora, Mexico. *T. Evans* for complainant. *Hawkins & Franklin, E. B. Peirce, and William Ainsworth Parker* for defendants. June 24, 1909. Dismissed on motion of complainant.

2551. CANANEA CONSOLIDATED COPPER COMPANY *v.* BALTIMORE & OHIO RAILROAD COMPANY ET AL.—Rates on coke from West Virginia and Pennsylvania points to Cananea, Sonora, Mexico. *T. Evans* for complainant. *Hawkins & Franklin, Martin L. Clardy, James C. Jeffery, E. L. Sargent, and William Ainsworth Parker* for defendants. June 24, 1909. Dismissed on motion of complainant.

2552. CANANEA CONSOLIDATED COPPER COMPANY *v.* MONONGAHELA RAILROAD COMPANY ET AL.—Rates on coke from East Millsboro, Pa., to Cananea, Sonora, Mexico. *T. Evans* for complainant. *George Stuart Patterson, Hawkins & Franklin, and E. B. Peirce* for defendants. June 24, 1909. Dismissed on motion of complainant.

2600. CANANEA CONSOLIDATED COPPER COMPANY *v.* BALTIMORE & OHIO RAILROAD COMPANY ET AL.—Rates on coke from West Virginia and Pennsylvania points to Cananea, Sonora, Mexico. *T. Evans* for complainant. *Hawkins & Franklin, Martin L. Clardy, and James C. Jeffery* for defendants. June 24, 1909. Dismissed on motion of complainant.

APPENDIX A.

REPARATION GRANTED UNDER SUPPLEMENTAL ORDERS OF THE COMMISSION DURING THE TIME COVERED BY THIS VOLUME.

**REPARATION GRANTED UNDER SUPPLEMENTAL ORDERS OF
THE COMMISSION DURING THE TIME COVERED BY THIS
VOLUME.**

1745. **BARTON, REISINGER, DAVIS COMPANY v. ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY.** April 15, 1909. Reparation of \$351.82, with interest, on shipments of cotton from Vincent, Ark., to Memphis, Tenn., on account of excessive rate.

1732. **PENROD WALNUT & VENEER COMPANY v. CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY ET AL.** June 8, 1909. Reparation of \$11.26, with interest, by Atchison, Topeka & Santa Fe Railway Company; reparation of \$219.73, with interest, by Chicago, Milwaukee & St. Paul Railway Company; reparation of \$58.41, with interest, by Chicago & Alton Railroad Company. June 21, 1909. Reparation of \$138.89, with interest, by Chicago, Burlington & Quincy Railroad Company, on shipments of veneer from Kansas City, Mo., to Chicago and various other Chicago rate points on account of excessive rates.

1324. **PAYNE-GARDNER COMPANY v. LOUISVILLE & NASHVILLE RAILROAD COMPANY.** June 30, 1909. Reparation of \$66.19 on shipments of sugar from New Orleans, La., to Gallatin, Tenn., on account of excessive rate.

APPENDIX B.

COMPLAINTS IN WHICH REPARATION WAS AUTHORIZED ON INFORMAL PLEADINGS.

DECEMBER 1, 1908, TO JUNE 30, 1909.

COMPLAINTS IN WHICH REPARATION WAS AUTHORIZED ON INFORMAL PLEADINGS, DECEMBER 1, 1908, TO JUNE 30, 1909.

647. *Hanging Rock Iron Company v. Norfolk & Western Railway Company.* February 3, 1909. Refund of \$26.60 on shipment of pig iron from Hanging Rock, Ohio, to Maysville, Ky., on account of excessive rate.

658. *G. W. Gates Lumber Company v. Oregon Railroad & Navigation Company.* February 26, 1909. Refund of \$55.40 on carload of lumber from Middletown, Oreg., to Garfield, Utah, on account of misrouting.

756. *McLane, Swift & Company v. Wisconsin Central Railway.* March 5, 1909. Refund of \$13.29 on carload of wheat from Sweetwater, Idaho, to Battle Creek, Mich., on account of misrouting.

809. *Guenther Milling Company v. Galveston, Harrisburg & San Antonio Railway Company.* January 29, 1909. Refund of \$413.25 on back-haul shipment of flour, meal, bran, etc., milled at San Antonio, Tex., from wheat originating at points in Oklahoma and forwarded to Houston, Tex., on account of excessive rate.

1088. *P. M. Maughan v. Southern Pacific Company.* October 10, 1908. Refund of \$99.10 on 2 shipments of hogs from Franklin, Idaho, and Cache Junction, Utah, to Wellsville, Utah, on account of excessive rate.

1094. *Baker & Holekamp v. Fort Smith & Western Railroad Company et al.* February 26, 1909. Refund of \$100.68 on shipment of cattle from Clearview, Okla., to St. Louis, Mo., on account of excessive rate.

1123. *Chicago, St. Paul, Minneapolis & Omaha Railway Company v. St. Louis & San Francisco Railroad Company.* January 7, 1909. Refund of \$73.27 on 2 shipments of apples from Galena, Mo., to Sioux Falls, S. Dak., on account of misrouting.

1124. *Floriston Pulp & Paper Company v. Southern Pacific Company.* November 27, 1908. Refund of \$1,129.53 on shipment of paper from Floriston, Cal., to Seattle, Wash., on account of excessive rate.

1127. *Floriston Pulp & Paper Company v. Southern Pacific Company.* December 9, 1908. Refund of \$922.96 on shipment of wrapping paper from Floriston, Cal., to Portland, Oreg., on account of excessive rate.

1165. *Mazapil Copper Company, Limited, v. Texas & New Orleans Railroad Company.* March 30, 1909. Refund of \$26.66 on carload of coke from Bessemer, Ala., to Saltillo, Mex., on account of misrouting.

1253. *Buchanan-Foster Company v. Pennsylvania Railroad Company et al.* January 6, 1909. Refund of \$429.68 on 14 carloads of tar oil from Donaghmore, Pa., to Norfolk, Va., on account of excessive rate.

1258. *New Richmond Roller Mills Company v. Wisconsin Central Railway.* February 3, 1909. Refund of \$682.43 on shipment of grain from Minneapolis, Minn., to New Richmond, Wis., on account of milling-in-transit rate having been applied instead of local rate.

1322. *American Cotton Oil Company v. Missouri, Kansas & Texas Railway Company.* February 27, 1909. Refund of \$122.18 on carload of cotton-seed oil from Fort Smith, Ark., to Cincinnati, Ohio, on account of misrouting.

1344. *American Sheet & Tin Plate Company v. Pennsylvania Railroad Company.* February 6, 1909. Refund of \$1.01 on shipment of planished iron from McKeesport, Pa., to Quincy, Ill., on account of excessive rate.

1398. *King Refining Company v. Southern Pacific Company.* November 13, 1908. Refund of \$351.37 on shipment of oil from Stock Yards, Cal., to Reno, Nev., on account of excessive rate.

1405. *S. E. Carr v. Oregon Railroad & Navigation Company*. February 24, 1909. Refund of \$25.07 on 5 shipments of various articles from Weston, Oreg., to Spokane, Wash., on account of excessive rate.

1471. *Tubbs Fuel & Feed Company v. Southern Pacific Company*. March 27, 1909. Refund of \$198.43 on 21 carloads of coal from Gallup, N. Mex., to Winthrop, Colo., on account of excessive rate.

1550. *Eastern & Western Lumber Company v. Southern Pacific Company*. November 28, 1908. Refund of \$24.20 on carload of lumber from Portland, Oreg., to Goldfield, Nev., on account of excessive rate.

1588. *Western Maryland Railroad Company v. Chesapeake & Ohio Railway Company*. February 24, 1909. Refund of \$2.95 on shipment of tobacco from Louisville, Ky., to Port Covington, Md., on account of misrouting.

1605. *Albion Milling Company v. Chicago & Northwestern Railway Company*. November 20, 1908. Refund of \$39.95 on 1 carload of flour and corn from Albion, Nebr., to Oelrichs, S. Dak., on account of excessive rate.

1622. *International Salt Company of Illinois v. Illinois Central Railroad Company*. March 30, 1909. Refund of \$10.20 on 2 carloads of salt from New Iberia, La., to St. Louis, Mo., on account of nonabsorption of switching charges.

1635. *C. H. Worcester Company v. Chicago, Burlington & Quincy Railroad Company*. March 23, 1909. Refund of \$48 on 2 carloads of poles from Pines, Wis., to Columbus, Nebr., on account of misrouting.

1639. *Madison Oil Company v. Central of Georgia Railway Company et al.* February 15, 1909. Refund of \$53.69 on 7 carloads of cotton linters from Madison, Ga., to Philadelphia, Pa., on account of excessive rate.

1649. *Blackshear Manufacturing Company v. Atlantic Coast Line Railroad Company et al.* March 19, 1909. Refund of \$241.91 on 25 carloads of phosphate rock from Nichols, Fla., to Blackshear, Ga., on account of excessive rate.

1651. *W. Z. Smith & Son v. St. Louis & San Francisco Railroad Company*. November 12, 1908. Refund of \$10.08 on shipment of broom corn from Lawton, Okla., to Arcola, Ill., on account of excessive rate.

1653. *Draper Company v. Atlantic Coast Line Railroad Company et al.* January 11, 1909. Refund of \$38 on 1 carload of machinery from Hopedale, Mass., to Iva, S. C., on account of excessive rate.

1781. *Ottumwa Bridge Company v. Chicago, Milwaukee & St. Paul Railway Company*. March 30, 1909. Refund of \$169.03 on shipment of bridge iron from Ottumwa, Iowa, to Mobile, Ala., on account of misrouting.

1835. *Clark Grain & Fuel Company v. Chicago, St. Paul, Minneapolis and Omaha Railway Company et al.* February 6, 1909. Refund of \$23.20 on carload of hay from Jim Falls, Wis., to Indian Town, Mich., on account of excessive rate.

1843. *Pennsylvania Coal & Supply Company v. Pere Marquette Railroad Company*. February 3, 1909. Refund of \$15 in switching on 3 carloads of coal from Saginaw, Mich., to Milwaukee, Wis., on account of nonabsorption of switching charge.

1856. *Advance Lumber Company v. Chicago, Rock Island & Pacific Railway Company*. December 23, 1908. Refund of \$17.40 on shipment of dry gum lumber from Edmondson, Ark., to Cleveland, Ohio, on account of misrouting.

1879. *Humburd Lumber Company v. Chicago, St. Paul, Minneapolis & Omaha Railway Company*. December 9, 1908. Refund of \$275.69 on carload of bar iron from Duluth, Minn., to Sandpoint, Idaho, on account of excessive rate.

1888. *Fidelity Coal Mining Company v. St. Louis & San Francisco Railroad Company*. February 6, 1909. Refund of \$115.52 on 2 carloads of coal from Weir and Turck, Kans., to Guthrie, Okla., on account of excessive rate.

1892. *Bartlesville National Bank v. St. Louis & San Francisco Railroad Company*. November 25, 1909. Refund of \$13.50 on carload of glass from St. Louis, Mo., to Bartlesville, Ind. T., on account of misrouting.

1914. *Wabash Screen Door Company v. St. Louis & San Francisco Railroad Company*. October 26, 1908. Refund of \$36.83 on carload of washboards from Memphis, Tenn., to Minneapolis, Minn., on account of misrouting.

1916. *Oval Wood Dish Company v. Pere Marquette Railroad Company et al.* February 5, 1909. Refund of \$18.26 on 2 carloads of butter dishes from Traverse City, Mich., to Burlington, Iowa, on account of excessive rate.

1953. *W. C. Morris & Son v. Eastern Railway of New Mexico et al.* February 13, 1909. Waiving collection of undercharge of \$271.30 on carload of cotton seed from Carey, Tex., to Portales, N. Mex., on account of excessive rate.

1973. *Sears, Roebuck & Company v. Vandalia Railroad.* September 29, 1908. Refund of \$0.82 on shipment of bed parts from Marysville, Ind., to Boydsville, Ky., on account of misrouting.

1977. *Chapin & Company v. Chicago, Rock Island & Pacific Railway Company.* October 29, 1908. Refund of \$15 on carload of bran from Kansas City, Mo., to Greenwood, Miss., on account of misrouting.

1993. *Ozark Cooperage & Lumber Company v. Chicago, Rock Island & Pacific Railway Company.* January 8, 1909. Refund of \$30 on carload of hoops from Proctor, Ark., to Coffeyville, Kans., on account of misrouting.

1998. *Duluth Log Company v. Northern Pacific Railway Company.* February 23, 1909. Refund of \$0.96 on shipment of poles from Duluth, Minn., to Holstein, Iowa, on account of nonallowance for stake equipment.

2006. *Fish Brothers Manufacturing Company v. Chicago, Rock Island & Pacific Railway Company.* March 30, 1909. Refund of \$15.53 on carload of farm wagons from Clinton, Iowa, to Winona, Minn., on account of misrouting.

2017. *Parsons Band Cutter & Self-Feeder Company v. Chicago, Rock Island & Pacific Railway Company.* February 4, 1909. Refund of \$18.17 on car of one hay press from Newton, Iowa, to Los Animas, Colo., on account of misrouting.

2026. *Central Arizona Railway Company v. Atchison, Topeka & Santa Fe Railway Company.* November 6, 1908. Refund of \$100.88 on 3 carloads of coal from Gallup, N. Mex., to Flagstaff, Ariz., on account of excessive rate.

2063. *Missouri Pacific Railway Company v. Chicago, Rock Island & Pacific Railway Company.* December 30, 1908. Refund of \$34.50 on carload of plaster from Watanga, Okla., to Delavan, Kans., on account of misrouting.

2079. *Winslow Brothers & Smith Company v. Norfolk & Western Railway Company.* February 15, 1909. Refund of \$157.78 on 3 carloads of fleshings from Narrows, Va., to Norwood, Mass., on account of excessive rate.

2094. *United States Chair Company v. Southern Railway Company et al.* February 8, 1909. Refund of \$136.62 on shipment of chair stock from Liberty, N. C., to Corry, Pa., on account of excessive rate.

2140. *Lindsay Brothers v. Chicago & Northwestern Railway Company.* March 30, 1909. Refund of \$14.08 on shipment of vehicles from Pontiac, Mich., to Milwaukee, Wis., on account of misrouting.

2148. *Grasselli Chemical Company v. Mobile & Ohio Railroad Company.* March 31, 1909. Refund of \$1,476.08 on shipment of pyrites imported, from Mobile, Ala., to Grasselli, Ala., on account of excessive rates.

2225. *Rock Island Plow Company v. Chicago, Rock Island & Pacific Railway Company.* October 28, 1908. Refund of \$1.69 on carload of agriculture implements, from Rock Island, Ill., to Osage, Iowa, on account of misrouting.

2278. *Huttig Manufacturing Company v. Chicago, Rock Island & Pacific Railway Company.* March 9, 1909. Refund of \$6.44 on carload of merchandise from Muscatine, Iowa, to Fulton, Mo., on account of misrouting.

2280. *Fordyce Lumber Company v. Chicago, Rock Island & Pacific Railway Company.* December 23, 1908. Refund of \$25.25 on carload of lumber from Fordyce, Ark., to Stoughton, Wis., on account of misrouting.

2343. *Southeastern Lime & Cement Company v. Southern Railway Company et al.* February 15, 1909. Refund of \$149.40 on 5 carloads of lime from Crab Orchard, Tenn., to Charleston, S. C., on account of excessive rate.

2359. *Willard Case Lumber Company v. Chicago, Rock Island & Pacific Railway Company.* January 13, 1909. Refund of \$9.20 on carload of lumber from Stineville, Ark., to Mason City, Ill., on account of misrouting.

2362. *Huttig Manufacturing Company v. Chicago, Rock Island & Pacific Railway Company.* November 11, 1908. Refund of \$2.23 on shipment of building paper from Muscatine, Iowa, to Fulton, Mo., on account of misrouting.

2368. *Bryant Lumber Company v. Chicago, Rock Island & Pacific Railway Company.* February 10, 1909. Refund of \$14 on carload of lumber from Fourche, Ark., to Waynoka, Ark., on account of misrouting.

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The following information was obtained from the records of the Department of Health, Education and Welfare, Division of Child Development, Bureau of Mental Subnormality, dated 10/1/68.

It is to be understood that the above information is for your information only and is not to be used for any other purpose without the express written consent of the Bureau of the Census.

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204 215 226 237 248 259 260 271 282 293 304 315 326 337 348 359 360 371 382 393 404 415 426 437 448 459 460 471 482 493 504 515 526 537 548 559 560 571 582 593 604 615 626 637 648 659 660 671 682 693 704 715 726 737 748 759 760 771 782 793 804 815 826 837 848 859 860 871 882 893 904 915 926 937 948 959 960 971 982 993 1004 1015 1026 1037 1048 1059 1060 1071 1082 1093 1104 1115 1126 1137 1148 1159 1160 1171 1182 1193 1204 1215 1226 1237 1248 1259 1260 1271 1282 1293 1304 1315 1326 1337 1348 1359 1360 1371 1382 1393 1404 1415 1426 1437 1448 1459 1460 1471 1482 1493 1504 1515 1526 1537 1548 1559 1560 1571 1582 1593 1604 1615 1626 1637 1648 1659 1660 1671 1682 1693 1704 1715 1726 1737 1748 1759 1760 1771 1782 1793 1804 1815 1826 1837 1848 1859 1860 1871 1882 1893 1904 1915 1926 1937 1948 1959 1960 1971 1982 1993 2004 2015 2026 2037 2048 2059 2060 2071 2082 2093 2104 2115 2126 2137 2148 2159 2160 2171 2182 2193 2204 2215 2226 2237 2248 2259 2260 2271 2282 2293 2304 2315 2326 2337 2348 2359 2360 2371 2382 2393 2404 2415 2426 2437 2448 2459 2460 2471 2482 2493 2504 2515 2526 2537 2548 2559 2560 2571 2582 2593 2604 2615 2626 2637 2648 2659 2660 2671 2682 2693 2704 2715 2726 2737 2748 2759 2760 2771 2782 2793 2804 2815 2826 2837 2848 2859 2860 2871 2882 2893 2904 2915 2926 2937 2948 2959 2960 2971 2982 2993 3004 3015 3026 3037 3048 3059 3060 3071 3082 3093 3104 3115 3126 3137 3148 3159 3160 3171 3182 3193 3204 3215 3226 3237 3248 3259 3260 3271 3282 3293 3304 3315 3326 3337 3348 3359 3360 3371 3382 3393 3404 3415 3426 3437 3448 3459 3460 3471 3482 3493 3504 3515 3526 3537 3548 3559 3560 3571 3582 3593 3604 3615 3626 3637 3648 3659 3660 3671 3682 3693 3704 3715 3726 3737 3748 3759 3760 3771 3782 3793 3804 3815 3826 3837 3848 3859 3860 3871 3882 3893 3904 3915 3926 3937 3948 3959 3960 3971 3982 3993 4004 4015 4026 4037 4048 4059 4060 4071 4082 4093 4104 4115 4126 4137 4148 4159 4160 4171 4182 4193 4204 4215 4226 4237 4248 4259 4260 4271 4282 4293 4304 4315 4326 4337 4348 4359 4360 4371 4382 4393 4404 4415 4426 4437 4448 4459 4460 4471 4482 4493 4504 4515 4526 4537 4548 4559 4560 4571 4582 4593 4604 4615 4626 4637 4648 4659 4660 4671 4682 4693 4704 4715 4726 4737 4748 4759 4760 4771 4782 4793 4804 4815 4826 4837 4848 4859 4860 4871 4882 4893 4904 4915 4926 4937 4948 4959 4960 4971 4982 4993 5004 5015 5026 5037 5048 5059 5060 5071 5082 5093 5104 5115 5126 5137 5148 5159 5160 5171 5182 5193 5204 5215 5226 5237 5248 5259 5260 5271 5282 5293 5304 5315 5326 5337 5348 5359 5360 5371 5382 5393 5404 5415 5426 5437 5448 5459 5460 5471 5482 5493 5504 5515 5526 5537 5548 5559 5560 5571 5582 5593 5604 5615 5626 5637 5648 5659 5660 5671 5682 5693 5704 5715 5726 5737 5748 5759 5760 5771 5782 5793 5804 5815 5826 5837 5848 5859 5860 5871 5882 5893 5904 5915 5926 5937 5948 5959 5960 5971 5982 5993 6004 6015 6026 6037 6048 6059 6060 6071 6082 6093 6104 6115 6126 6137 6148 6159 6160 6171 6182 6193 6204 6215 6226 6237 6248 6259 6260 6271 6282 6293 6304 6315 6326 6337 6348 6359 6360 6371 6382 6393 6404 6415 6426 6437 6448 6459 6460 6471 6482 6493 6504 6515 6526 6537 6548 6559 6560 6571 6582 6593 6604 6615 6626 6637 6648 6659 6660 6671 6682 6693 6704 6715 6726 6737 6748 6759 6760 6771 6782 6793 6804 6815 6826 6837 6848 6859 6860 6871 6882 6893 6904 6915 6926 6937 6948 6959 6960 6971 6982 6993 7004 7015 7026 7037 7048 7059 7060 7071 7082 7093 7104 7115 7126 7137 7148 7159 7160 7171 7182 7193 7204 7215 7226 7237 7248 7259 7260 7271 7282 7293 7304 7315 7326 7337 7348 7359 7360 7371 7382 7393 7404 7415 7426 7437 7448 7459 7460 7471 7482 7493 7504 7515 7526 7537 7548 7559 7560 7571 7582 7593 7604 7615 7626 7637 7648 7659 7660 7671 7682 7693 7704 7715 7726 7737 7748 7759 7760 7771 7782 7793 7804 7815 7826 7837 7848 7859 7860 7871 7882 7893 7904 7915 7926 7937 7948 7959 7960 7971 7982 7993 8004 8015 8026 8037 8048 8059 8060 8071 8082 8093 8104 8115 8126 8137 8148 8159 8160 8171 8182 8193 8204 8215 8226 8237 8248 8259 8260 8271 8282 8293 8304 8315 8326 8337 8348 8359 8360 8371 8382 8393 8404 8415 8426 8437 8448 8459 8460 8471 8482 8493 8504 8515 8526 8537 8548

1. The Commission has the honor to acknowledge the receipt of your letter of the 10th inst. and to inform you that the same has been forwarded to the proper authorities for their consideration.

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ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED
DATE 08-09-2001 BY 60322 UCBAW/SJS

2000. In the first half of the century, the United States was a major force in the world, and its influence was felt in many parts of the world. In the second half of the century, the United States was a major force in the world, and its influence was felt in many parts of the world.

2025. 2026. 2027. 2028. 2029. 2030. 2031. 2032. 2033. 2034. 2035. 2036. 2037. 2038. 2039. 2040. 2041. 2042. 2043. 2044. 2045. 2046. 2047. 2048. 2049. 2050. 2051. 2052. 2053. 2054. 2055. 2056. 2057. 2058. 2059. 2060. 2061. 2062. 2063. 2064. 2065. 2066. 2067. 2068. 2069. 2070. 2071. 2072. 2073. 2074. 2075. 2076. 2077. 2078. 2079. 2080. 2081. 2082. 2083. 2084. 2085. 2086. 2087. 2088. 2089. 2090. 2091. 2092. 2093. 2094. 2095. 2096. 2097. 2098. 2099. 2100. 2101. 2102. 2103. 2104. 2105. 2106. 2107. 2108. 2109. 2110. 2111. 2112. 2113. 2114. 2115. 2116. 2117. 2118. 2119. 2120. 2121. 2122. 2123. 2124. 2125. 2126. 2127. 2128. 2129. 2130. 2131. 2132. 2133. 2134. 2135. 2136. 2137. 2138. 2139. 2140. 2141. 2142. 2143. 2144. 2145. 2146. 2147. 2148. 2149. 2150. 2151. 2152. 2153. 2154. 2155. 2156. 2157. 2158. 2159. 2160. 2161. 2162. 2163. 2164. 2165. 2166. 2167. 2168. 2169. 2170. 2171. 2172. 2173. 2174. 2175. 2176. 2177. 2178. 2179. 2180. 2181. 2182. 2183. 2184. 2185. 2186. 2187. 2188. 2189. 2190. 2191. 2192. 2193. 2194. 2195. 2196. 2197. 2198. 2199. 2200. 2201. 2202. 2203. 2204. 2205. 2206. 2207. 2208. 2209. 2210. 2211. 2212. 2213. 2214. 2215. 2216. 2217. 2218. 2219. 2220. 2221. 2222. 2223. 2224. 2225. 2226. 2227. 2228. 2229. 2230. 2231. 2232. 2233. 2234. 2235. 2236. 2237. 2238. 2239. 2240. 2241. 2242. 2243. 2244. 2245. 2246. 2247. 2248. 2249. 2250. 2251. 2252. 2253. 2254. 2255. 2256. 2257. 2258. 2259. 2260. 2261. 2262. 2263. 2264. 2265. 2266. 2267. 2268. 2269. 2270. 2271. 2272. 2273. 2274. 2275. 2276. 2277. 2278. 2279. 2280. 2281. 2282. 2283. 2284. 2285. 2286. 2287. 2288. 2289. 2290. 2291. 2292. 2293. 2294. 2295. 2296. 2297. 2298. 2299. 2300. 2301. 2302. 2303. 2304. 2305. 2306. 2307. 2308. 2309. 2310. 2311. 2312. 2313. 2314. 2315. 2316. 2317. 2318. 2319. 2320. 2321. 2322. 2323. 2324. 2325. 2326. 2327. 2328. 2329. 2330. 2331. 2332. 2333. 2334. 2335. 2336. 2337. 2338. 2339. 2340. 2341. 2342. 2343. 2344. 2345. 2346. 2347. 2348. 2349. 2350. 2351. 2352. 2353. 2354. 2355. 2356. 2357. 2358. 2359. 2360. 2361. 2362. 2363. 2364. 2365. 2366. 2367. 2368. 2369. 2370. 2371. 2372. 2373. 2374. 2375. 2376. 2377. 2378. 2379. 2380. 2381. 2382. 2383. 2384. 2385. 2386. 2387. 2388. 2389. 2390. 2391. 2392. 2393. 2394. 2395. 2396. 2397. 2398. 2399. 2400. 2401. 2402. 2403. 2404. 2405. 2406. 2407. 2408. 2409. 2410. 2411. 2412. 2413. 2414. 2415. 2416. 2417. 2418. 2419. 2420. 2421. 2422. 2423. 2424. 2425. 2426. 2427. 2428. 2429. 2430. 2431. 2432. 2433. 2434. 2435. 2436. 2437. 2438. 2439. 2440. 2441. 2442. 2443. 2444. 2445. 2446. 2447. 2448. 2449. 2450. 2451. 2452. 2453. 2454. 2455. 2456. 2457. 2458. 2459. 2460. 2461. 2462. 2463. 2464. 2465. 2466. 2467. 2468. 2469. 2470. 2471. 2472. 2473. 2474. 2475. 2476. 2477. 2478. 2479. 2480. 2481. 2482. 2483. 2484. 2485. 2486. 2487. 2488. 2489. 2490. 2491. 2492. 2493. 2494. 2495. 2496. 2497. 2498. 2499. 2500. 2501. 2502. 2503. 2504. 2505. 2506. 2507. 2508. 2509. 2510. 2511. 2512. 2513. 2514. 2515. 2516. 2517. 2518. 2519. 2520. 2521. 2522. 2523. 2524. 2525. 2526. 2527. 2528. 2529. 2530. 2531. 2532. 2533. 2534. 2535. 2536. 2537. 2538. 2539. 2540. 2541. 2542. 2543. 2544. 2545. 2546. 2547. 2548. 2549. 2550. 2551. 2552. 2553. 2554. 2555. 2556. 2557. 2558. 2559. 2560. 2561. 2562. 2563. 2564. 2565. 2566. 2567. 2568. 2569. 2570. 2571. 2572. 2573. 2574. 2575. 2576. 2577. 2578. 2579. 2580. 2581. 2582. 2583. 2584. 2585. 2586. 2587. 2588. 2589. 2590. 2591. 2592. 2593. 2594. 2595. 2596. 2597. 2598. 2599. 2600. 2601. 2602. 2603. 2604. 2605. 2606. 2607. 2608. 2609. 2610. 2611. 2612. 2613. 2614. 2615. 2616. 2617. 2618. 2619. 2620. 2621. 2622. 2623. 2624. 2625. 2626. 2627. 2628. 2629. 2630. 2631. 2632. 2633. 2634. 2635. 2636. 2637. 2638. 2639. 2640. 2641. 2642. 2643. 2644. 2645. 2646. 2647. 2648. 2649. 2650. 2651. 2652. 2653. 2654. 2655. 2656. 2657. 2658. 2659. 2660. 2661. 2662. 2663. 2664. 2665. 2666. 2667. 2668. 2669. 2670. 2671. 2672. 2673. 2674. 2675. 2676. 2677. 2678. 2679. 2680. 2681. 2682. 2683. 2684. 2685. 2686. 2687. 2688. 2689. 2690. 2691. 2692. 2693. 2694. 2695. 2696. 2697. 2698. 2699. 2700. 2701. 2702. 2703. 2704. 2705. 2706.

The Bureau of Prison Management, Louisiana State Penitentiary, New Orleans, La., is advised of this from
 the Bureau of Prison Management, Louisiana State Penitentiary, New Orleans, La.

[illegible]

24th Street, New York & Company, 100 Broadway, New York & St. Louis
for the purpose of receiving the same. The above is a receipt of money from
the same. The undersigned has no other interest in the same.

2222 Broadway, New York, N.Y. 10024. Tel. 212-691-1234. Telex 212-691-1234. Cable 212-691-1234. Fax 212-691-1234. E-mail 212-691-1234.

St. Louis & Eastern Missouri, Chicago & St. Louis Railway
2000 1940, 1941, 1942, 1943, 1944, 1945, 1946, 1947, 1948, 1949, 1950, 1951, 1952, 1953, 1954, 1955, 1956, 1957, 1958, 1959, 1960, 1961, 1962, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 26

of said property & conveyed to owner of said & St. Louis Rail-
road Co. for the purpose of said salt from Cleve-
land, Ohio to the amount of one million

For the Company's Chicago & St. Louis Railroad, 2 1898. Payment of \$25.00 on shipment of powder from
O'Leary, Ky., on account of interest.

Kiss v. Atlantic Coast Line Railroad Company. December 26, 1905.
on complaint of failure to deliver from Porters Station, Fla., to Philadelphia.
At excessive rate.

2584. *Burkenroad-Goldsmith Company v. New Orleans & Northeastern Railroad Company et al.* March 30, 1909. Refund of \$13.94 on shipment of sugar and coffee from New Orleans, La., to Gunthersville, Ala., on account of excessive rate.

2588. *Lear-Williams Furniture Company v. Louisville & Nashville Railroad Company et al.* January 5, 1909. Refund of \$1.08 on shipment of furniture from Carrollton, Ky., to Yazoo City, Miss., on account of excessive rate.

2593. *R. B. Carson v. Wabash Railroad Company.* February 17, 1909. Refund of \$15.53 on shipments of coal from eastern points to Moulton, Iowa, on account of excessive rates.

2602. *American Tobacco Company v. Cleveland, Cincinnati, Chicago & St. Louis Railway Company.* February 2, 1909. Refund of \$0.54 on shipment of tobacco from Louisville, Ky., to North Lawrence, N. Y., on account of excessive rate.

2661. *Jones & Laughlin Steel Company v. Pittsburg, Cincinnati, Chicago & St. Louis Railway Company.* March 19, 1909. Refund of \$15 on carload of steel from Pittsburg, Pa., to Knoxville, Tenn., on account of misrouting.

2674. *National Bedding Company v. Missouri, Kansas & Texas Railway Company et al.* January 9, 1909. Refund of \$34.97 on 3 carloads of cotton linters from Eufaula, Okla., to Leavenworth, Kans., on account of excessive rate.

2703. *Embree Iron Company v. Virginia & Southwestern Railway Company et al.* February 23, 1909. Refund of \$25.05 on shipments of coke from Imboden, Va., to Embreeville, Tenn., on account of excessive minimum carload weight.

2711. *Linton Rolling Mill Company v. Northern Pacific Railway Company.* February 3, 1909. Refund of \$695.63 on shipment of rails from Taft, Mont., to Seattle, Wash., on account of excessive rate.

2725. *Twentieth Century Heating & Ventilating Company v. Erie Railroad Company.* January 7, 1909. Refund of \$10 on carload of furnaces from Akron, Ohio, to Minneapolis, Minn., on account of excessive rate.

2734. *Grays Harbor Commercial Company v. Chicago, St. Paul, Minneapolis & Omaha Railway Company.* February 5, 1909. Payment of \$5 on car of shingles from Montesano, Wash., to Mason City, Ill., on account of misrouting.

2735. *E. C. Best & Company v. Chicago, St. Paul, Minneapolis & Omaha Railway Company.* March 30, 1909. Refund of \$16.50 on carload of potatoes from Barnesville, Minn., to Russell, Kans., on account of misrouting.

2747. *Horace Stocking & Son v. Chicago Great Western Railway Company.* August 22, 1908. Refund of \$21.63 on carload of stone from Farley, Iowa, to Lindenwood, Ill.

2749. *Sligo Iron Store Company v. Northern Pacific Railway Company.* February 5, 1909. Refund of \$5 on shipment of wheels from Terre Haute, Ind., to Bellingham, Wash., on account of excessive rate.

2772. *Landau Grocery Company v. St. Louis, Iron Mountain & Southern Railway Company.* February 27, 1909. Refund of \$0.98 on shipment of hominy grits from St. Louis, Mo., to Waterproof, La., on account of excessive rate.

2779. *Herbert Wingfield v. Southern Railway Company.* February 15, 1909. Refund of \$112.62 on 10 carloads of cross-ties from various points in Virginia to Odenton, Md., on account of misrouting.

2799. *Meyer, Wilson & Company v. Southern Pacific Company.* December 22, 1908. Refund of \$566.13 on shipment of fertilizer from Hamburg, Germany, to Los Angeles, Cal., on account of excessive rate.

2833. *Union Grain Company v. Atchison, Topeka & Santa Fe Railway Company.* February 15, 1909. Refund of \$33.49 on carload of corn from Cashion, Okla., to St. Louis, Mo., on account of misrouting.

2837. *Beckman Lumber Company v. Chicago, Rock Island & Pacific Railway Company et al.* February 25, 1909. Refund of \$33 on carload of lumber from Opitz, Ark., to Fort Worth, Tex., on account of excessive rate.

2841. *A. Morrison v. Chicago, Rock Island & Pacific Railway Company et al.* February 27, 1909. Refund of \$51.57 on shipment of potatoes from Harrah, Okla., to Amarillo, Tex., on account of excessive rate.

2844. *Coal Hill Coal Company v. Chicago & Eastern Illinois Railroad Company et al.* March 30, 1909. Refund of \$89.43 on 2 carloads of coal from West Frankfort, Ill., to Stuart, Nebr., on account of excessive rate.

2845. *Great Lakes Dredge & Dock Company v. Chicago & Eastern Illinois Railroad Company et al.* February 9, 1909. Refund of \$69.66 on 8 carloads of coal from McIntosh, Ind., to Gary, Ind., on account of excessive rate.

2848. *Eschenburg & Dalton v. Chicago, Rock Island & Pacific Railway Company.* November 14, 1908. Refund of \$19.16 on 2 cars of vats from Armstrong and Graettinger, Iowa, to Burr Oak, Ill., on account of excessive minimum.

2850. *T. H. Bunch & Company v. Chicago, Rock Island & Pacific Railway Company.* November 2, 1908. Refund of \$77.60 on 2 carloads of hay from Chickasha, Ind. T., to Little Rock, Ark., on account of excessive rate.

2880. *Topeka Woolen Manufacturing Company v. Chicago, Rock Island & Pacific Railway Company.* November 4, 1908. Refund of \$11.60 on shipment of cotton from Memphis, Tenn., to Topeka, Kans., on account of excessive rate.

2882. *Benton Coal Company v. Chicago, Rock Island & Pacific Railway Company et al.* January 27, 1909. Refund of \$30.57 on 5 carloads of coal from Benton, Ill., to West Liberty and Iowa City, Iowa, on account of excessive rate.

2884. *R. V. Womack Metal Company v. St. Louis & San Francisco Railroad Company et al.* March 11, 1909. Refund of \$72 on carload of cotton-seed hulls and meal from Dallas, Tex., to Hugo, Ind. T., on account of excessive rate.

2894. *Citizens' Electric Company v. St. Louis & San Francisco Railroad Company.* December 7, 1908. Refund of \$53.79 on carload of coal from Cherokee, Kans., to Eureka Springs, Ark., on account of excessive rate.

2914. *F. L. Hendrickson Lumber Company v. St. Louis, Iron Mountain & Southern Railway Company.* February 3, 1909. Refund of \$26.92 on carload of lumber from Vian, Ind. T., to Chicago, Ill., on account of misrouting.

2938. *Cia Pan Americana de Vehiculos v. Michigan Central Railroad Company et al.* February 15, 1909. Refund of \$74.20 on 1 automobile from Detroit, Mich., to Mexico City, Mexico, on account of excessive rate.

2940. *Mitchem Brothers & Company v. Northern Pacific Railway Company.* February 3, 1909. Refund of \$212.50 on 25 carloads of live stock from Clearwater Branch points to Spokane, Wash., on account of excessive rate.

2943. *Bank of Hurtsboro v. Seaboard Air Line Railway.* November 18, 1908. Refund of \$63.47 on 4 carloads of kainit from Savannah, Ga., to Hurtsboro, Ala., on account of excessive rate.

2947. *E. H. Stanton Company v. Northern Pacific Railway Company.* February 3, 1909. Refund of \$476 on 56 carloads of live stock from Clearwater Branch points to Spokane, Wash., on account of excessive rate.

2961. *Tennessee Fibre Company v. Louisville & Nashville Railroad Company.* January 26, 1908. Refund of \$28.75 on shipment of cotton-seed meal from Memphis, Tenn., to Mobile, Ala., on account of excessive rate.

2977. *Keys-Fannin Lumber Company v. Chesapeake & Ohio Railway Company.* March 25, 1909. Refund of \$78.30 on carload of lumber from Mullens, W. Va., to East Aurora, N. Y., on account of misrouting.

2978. *Matthew-Addy & Company v. Chesapeake & Ohio Railway Company.* December 14, 1908. Refund of \$39.75 on 2 carloads of pig iron from Glen Wilton, Va., to Oil City, Pa., on account of misrouting.

2991. *Fresno Agricultural Works v. Southern Pacific Company.* February 9, 1909. Refund of \$64.80 on shipment of scrapers from Fresno, Cal., to Palisade, Nev., on account of excessive rate.

2992. *Fresno Agriculture Works v. Southern Pacific Company.* February 9, 1909. Refund of excessive rate on shipment of scrapers from Palisade, Nev., to Fresno, Cal. Order entered in No. 2991 covering this claim.

2995. *Smith, Baker & Company v. Great Northern Railway Company et al.* September 10, 1908. Refund of \$170.40 on shipment of tea from Yokohama, Japan, to Sioux Falls, S. Dak., on account of excessive rate.

3039. *Hagerstown Furniture Company v. Cumberland Valley Railroad Company.* December 29, 1908. Refund of \$10 on shipment of tables from Hagerstown, Md., to New York, on account of misrouting.

3044. *Midland Linseed Company v. Chicago, St. Paul, Minneapolis & Omaha Railway Company.* February 2, 1909. Refund of \$55.47 on shipment of linseed oil from Minneapolis, Minn., to St. Louis, Mo., on account of excessive rate.

3046. *Jos. T. Ryerson & Son v. Pittsburg & Lake Erie Railroad Company et al.* February 19, 1909. Refund of \$5 on carload of tubing from Ellwood City, Pa., to Chicago, Ill., on account of misrouting.

3053. *United States Brick Corporation v. Michigan Central Railroad Company et al.* March 18, 1909. Refund of \$28.98 on carload of brick from Michigan City, Ind., to Goodland, Ind., on account of excessive rate.

3056. *Waters-Pierce Oil Company v. Kansas City Southern Railway Company.* March 26, 1909. Refund of \$162.02 on 2 carloads of turpentine from Starks, La., to Houston, Tex., on account of excessive rates.

3066. *Lambert Paper Company v. Oregon Short Line Railroad Company.* March 30, 1909. Refund of \$10.16 on carload of paper bags from Taylorville, Ill., to Salt Lake, Utah, on account of excessive rate.

3071. *Triumph Catsup & Pickle Company v. Illinois Central Railroad Company.* December 14, 1908. Refund of \$125.64 on 2 carloads of tomato pulp from Crider, Ky., to East St. Louis, Ill., on account of excessive rate.

3072. *Cornie Stave Company v. Chicago, Rock Island & Pacific Railway Company.* November 27, 1908. Refund of \$10.94 on shipment of staves from Junction, Ark., to St. Louis, Mo., on account of misrouting.

3076. *Alphons Custodis Chimney Construction Company v. Pennsylvania Railroad Company.* December 22, 1908. Refund of \$71.38 on shipment of brick from Fallston, Pa., to Wilmington, Del., on account of excessive rate.

3079. *Weber & Underwood v. Louisville & Nashville Railroad Company.* December 21, 1908. Refund of \$54.51 on carload of wagons and buggies from Henderson, Ky., to Beaucoup, Ill., on account of excessive rate.

3081. *C. W. Jackson v. Southern Pacific Company.* December 26, 1908. Refund of excessive rate on 3 carloads of wool from Mill City, Nev., to Stockton, Cal.

3096. *Morrison-Merrill Company v. Southern Pacific Company.* February 5, 1909. Refund of \$40.30 on shipment of lumber from Loyalton, Cal., to Ely, Nev., on account of excessive rate.

3101. *Riverside Mill Company v. Southern Pacific Company.* March 9, 1909. Refund of \$908.33 on shipment of barley from Germantown, Cal., to Reno, Nev., on account of excessive rate.

3107. *Evens & Howard Fire Brick Company v. Illinois Central Railroad Company.* March 19, 1909. Refund of \$3.77 on carload of sewer pipe from Cheltenham, Mo., to Champaign, Ill., on account of excessive rate due to nonabsorption of switching charges.

3112. *Paepcke-Leicht Lumber Company v. Illinois Central Railroad Company.* January 28, 1909. Refund of \$4.22 on 2 carloads of lumber from Howard, Miss., to St. Louis, Mo., on account of excessive switching charges.

3114. *Universal Portland Cement Company v. Illinois Central Railroad Company.* February 9, 1909. Refund of \$8.56 on carload of cement from Buffington, Ind., to St. Louis, Mo., on account of excessive rate.

3117. *Blinn-Robinson Company v. Atchison, Topeka & Santa Fe Railway Company.* December 18, 1908. Refund of \$16.88 on shipment of lumber from Los Angeles, Cal., to Springdale, Nev., on account of excessive rate.

3129. *J. W. Parson Company v. Pennsylvania Railroad Company et al.* March 17, 1909. Refund of \$41.31 on carload of sand from South Vineland, N. J., to Lansdowne, Pa., on account of excessive rate.

3142. *Camden Iron Works and Florence Iron Works v. Seaboard Air Line Railway et al.* March 30, 1909. Refund of \$110.70 on 17 carloads of pig iron from Ironton, Ala., to Florence, N. J., on account of excessive rate.

3172. *A. F. Gallun & Sons v. Pennsylvania Company.* February 15, 1909. Refund of \$6 on carload of hides from East Liberty, Pa., to Milwaukee, Wis., on account of misrouting.

3187. *Dodds Lumber Company v. Virginia & Southwestern Railway Company.* March 27, 1909. Refund of \$20.25 on carload of lumber from Shouns, Tex., to Lincoln, Nebr., on account of misrouting.

3197. *Dempster Mill Manufacturing Company v. Chicago, St. Paul, Minneapolis & Omaha Railway Company.* December 21, 1908. Refund of \$28 on shipment of windmills from Sioux Falls, S. Dak., to New Salem, N. Dak., on account of misrouting.

3203. *G. H. Daggett Company v. Chicago, Indianapolis & Louisville Railway Company et al.* March 31, 1909. Refund of \$4.83 on carload of grain from Chicago, Ill., to Dayton, Ohio, on account of excessive rate.

3204. *Granby Mining & Smelting Company v. Missouri Pacific Railway Company et al.* January 14, 1909. Refund of \$39.47 on shipment of pig lead from Granby, Mo., to Denver, Colo., on account of excessive rate.

3206. *S. N. Seip v. Santa Fe, Prescott & Phoenix Railway Company et al.* February 11, 1909. Refund of \$6.39 on shipment of 2 bales of tobacco from Veracruz, Mexico, to Phoenix, Ariz., on account of excessive rate.

3212. *Weber-Russell Canning Company v. Northern Pacific Railway Company.* March 31, 1909. Refund of \$112.68 on 2 cars of canned goods from Sumner, Wash., to Portland, Oreg., on account of excessive rate.

3220. *D. L. Aiken & Son v. Chicago & Northwestern Railway Company.* March 6, 1909. Refund of \$17.15 on shipment of baled hay from Sioux Falls, S. Dak., to Onalaska, Wis., on account of excessive rate.

3223. *J. P. Williams Company v. Atlantic Coast Line Railroad Company.* December 19, 1908. Refund of \$203.66 on 4 shipments of rosin from Lucknow, S. C., to Savannah, Ga., on account of excessive rate.

3239. *Western Building Material Company v. Southern Pacific Company.* December 30, 1908. Refund of \$109 on shipment of plaster from Reno, Nev., to San Mateo, Cal., on account of excessive rate.

3247. *Chas. B. Justice v. Central Railroad Company of New Jersey et al.* February 6, 1909. Refund of \$31.50 on shipment of potatoes from Greenwich, N. J., to Portland, Me., on account of excessive rate.

3248. *L. S. Needham & Bro. v. Chicago, St. Paul, Minneapolis & Omaha Railway Company.* January 6, 1909. Refund of \$17.94 on 3 carloads of cattle from Bonesteel, Nebr., to Winside, Nebr., on account of excessive rate.

3253. *Northern Iron Company v. Delaware & Hudson Company.* March 16, 1909. Refund of \$1,915.97 on 47 carloads of pig iron from Port Henry, N. Y., to Pottsville, Pa., on account of excessive rate.

3254. *E. B. Shelfer Company v. Atlantic Coast Line Railroad Company et al.* March 1, 1909. Refund of \$54.76 on 2 carloads of lime from Ocala, Fla., to Quincy, Fla., on account of excessive rate.

3269. *Smith & Bond v. South Dakota Central Railway Company et al.* February 5, 1909. Refund of \$35.03 on carload of flax from Wentworth, S. Dak., to Minneapolis, Minn., on account of excessive rate.

3272. *G. F. Graff v. South Dakota Central Railway Company et al.* March 6, 1909. Refund of \$44.42 on carload of flax shipped from Rutland, S. Dak., to Minneapolis, Minn., on account of excessive rate.

3273. *Rutland Farmers' Elevator Company v. South Dakota Central Railway Company et al.* March 6, 1909. Refund of \$49.17 on carload of flax from Rutland, S. Dak., to Minneapolis, Minn., on account of excessive rate.

3294. *Booth-Kelly Lumber Company v. Southern Pacific Company's Lines in Oregon.* March 30, 1909. Refund of \$51.25 on carload of fir lumber from Hendling, Oreg., to Cleveland, Ohio, on account of excessive rate.

3301. *Oval Wood Dish Company v. Pere Marquette Railroad Company et al.* February 5, 1909. Refund of \$10.08 on carload of oval wood dishes from Traverse City, Mich., to Davenport, Iowa, on account of excessive rate.

3302. *Oval Wood Dish Company v. Pere Marquette Railroad Company et al.* February 5, 1909. Refund on oval wood dishes from Traverse City, Mich., to Burlington, Iowa, on account of excessive rate. Order entered in No. 1916 covering this shipment.

3305. *Wood-Hazenbarth Cattle Company v. El Paso & Southwestern Railroad Company et al.* February 26, 1909. Refund of \$260 on 13 carloads of cattle from Columbus, N. Mex., to Hopkins Spier, Kans., on account of excessive rate.

3318. *Ball Brothers Glass Manufacturing Company v. Illinois Central Railroad Company.* November 10, 1908. Refund of \$24.83 on carload of fruit jars from Belleville, Ill., to Fremont, Nebr., on account of misrouting.

3341. *Re Ora Brothers v. Grand Trunk Railway Company.* January 6, 1909. Refund of \$10 on 2 carloads of screenings from Chicago, Ill., to Swanton, Vt., on account of excessive rate.

3344. *St. Louis Portland Cement Company v. Chicago, Burlington & Quincy Railroad Company*. December 14, 1908. Refund of \$51.87 on 3 carloads of cement shipped from Prospect Hill, Mo., to Rockport, Ill., on account of excessive rate.

3352. *Henry Weinhard Brewery v. Oregon Railroad & Navigation Company et al.* March 6, 1909. Refund of \$84 on carload of beer from Portland, Oreg., to Vale, Oreg., on account of excessive rate.

3353. *Copper Queen Consolidated Mining Company v. El Paso & Southwestern Railroad Company*. October 27, 1908. Refund on carload of pig iron from Anniston, Ala., to Douglas, Ariz., on account of excessive rate. Order entered; see No. 3348.

3354. *Copper Queen Consolidated Mining Company v. El Paso & Southwestern Railroad Company et al.* October 27, 1908. Refund on carload of pig iron shipped from Anniston, Ala., to Douglas, Ariz., on account of excessive rate. Order entered; see No. 3348.

3355. *Copper Queen Consolidated Mining Company v. El Paso & Southwestern Railroad Company*. October 27, 1908. Refund on car of pig iron from Anniston, Ala., to Douglas, Ariz., on account of excessive rate. Order entered; see No. 3348.

3361. *Mengel Box Company v. Illinois Central Railroad Company*. January 9, 1909. Refund of \$9.94 on 3 carloads of lumber from points in Mississippi to St. Louis, Mo., on account of excessive switching charges.

3378. *American Bottle Company v. Chicago, Burlington & Quincy Railroad Company*. December 2, 1908. Refund of \$80.14 on 30 carloads of brick from St. Louis, Mo., to Streator, Ill., on account of excessive rate.

3385. *Clyde Kraut Company v. Wheeling & Lake Erie Railroad Company*. January 7, 1909. Refund of \$3.57 on 2 carloads of canned vegetables from Clyde, Ohio, to Danville, Ill., on account of excessive rate.

3396. *B. Schragge v. Northern Pacific Railway Company*. February 3, 1909. Refund of \$37.15 on carload of scrap iron from Fargo, N. Dak., to Pembina, N. Dak., on account of excessive rate.

3398. *Federal Lead Company v. Chicago, Peoria & St. Louis Railway Company*. March 13, 1909. Refund of \$2 on 2 carloads of pig lead from Federal, Ill., to Cincinnati, Ohio, on account of misrouting.

3403. *Anheuser-Busch Brewing Association v. Chicago, Burlington & Quincy Railroad Company*. March 27, 1909. Refund of \$62.23 on carload of beer from St. Louis, Mo., to McCook, Nebr., on account of excessive rate.

3407. *Geo. Bolln Company v. Chicago & Northwestern Railway Company*. November 23, 1908. Refund of \$67.46 on carload of corn from Lindsay, Nebr., to Douglas, Wyo., on account of excessive rate.

3426. *Charles Warner Company v. Pennsylvania Railroad Company*. February 5, 1909. Refund of \$11.05 on carload of lime from Rambo, Pa., to Pitman, N. J., on account of excessive rate.

3435. *Frye & Bruhn, Incorporated, v. Southern Pacific Company*. December 14, 1908. Refund of \$741.64 on 23 carloads of cattle from Famoso, Cal., to Seattle, Wash., on account of excessive rate.

3438. *W. D. Reeres Lumber Company v. Illinois Central Railroad Company*. March 9, 1909. Refund of \$4.88 on 2 carloads of lumber from Helena, Ark., to Manitowoc, Wis., on account of misrouting.

3443. *Northern Coal & Coke Company v. Union Pacific Railroad Company et al.* October 17, 1908. Refund of \$2,746.63 on 39 carloads of coal from Erie and Canfield, Colo., to various points, on account of excessive rate.

3444. *H. L. Nutt v. Eastern Railway of New Mexico System*. January 27, 1909. Refund of \$149.92 on carload of cane seed from Texico, N. Mex., to Granbury, Tex., and diverted to Fort Worth, Tex., on account of excessive rate.

3447. *Lanesboro Lumber Company v. Illinois Central Railroad Company*. February 10, 1909. Refund of \$40.59 on carload of coal from Cambria, Ill., to Lanesboro, Minn., on account of misrouting.

3448. *Valley Traction Company v. Cumberland Valley Railroad Company*. October 30, 1908. Refund of \$54.80 on shipment of stone ballast from Hagerstown, Md., to Lemayrel, Pa., on account of excessive rate.

3452. *Wyatt Lumber Company v. Chicago, Rock Island & Pacific Railway Company*. March 20, 1909. Refund of \$33.86 on carload of lumber from Wyatt, La., to Gillett, Wis., on account of misrouting.

3466. *Western Meat Company v. Southern Pacific Company*. January 4, 1909. Refund of \$1,603.47 on 24 carloads of hay from Perth, Nev., to South San Francisco, Cal., on account of excessive rate.

3498. *Noonan Meat Company v. Southern Pacific Company*. October 30, 1908. Refund of \$222.16 on 26 carloads of cattle and sheep from Winnemucca and Lovelocks, Nev., to Santa Rosa, Cal., on account of excessive rate.

3506. *Central Coal & Coke Company v. St. Louis & San Francisco Railroad Company*. September 16, 1908. Refund of \$858 on 858 carloads of coal from Kansas City, Mo., to Kansas City Southern Railway Station, Kansas City, Mo., on account of excessive rate.

3510. *United Iron Works Company v. St. Louis & San Francisco Railroad Company*. December 21, 1908. Refund of \$60.06 on carload of machinery from Springfield, Mo., to Adamsor, Okla., on account of misrouting.

3511. *Pittsburg Slate Company v. Bangor & Portland Railway Company*. November 18, 1908. Refund of \$13.14 on shipment of roofing slate from Bangor, Pa., to Strawberry Ridge, Pa., on account of excessive rate.

3514. *Roman Nose Gypsum Company v. Chicago, Rock Island & Pacific Railway Company*. September 10, 1908. Refund of \$39.60 on shipment of plaster from Bickford, Okla., to Jackson, Miss., on account of misrouting.

3554. *National Association Automobile Manufacturers v. Chicago, Rock Island & Pacific Railway Company*. March 30, 1909. Refund of \$45.56 on 1 buckboard from Chicago, Ill., to Stratford, Tex., on account of excessive rate.

3557. *F. S. Hendrickson Lumber Company v. Missouri Pacific Railway Company*. December 22, 1908. Refund of \$5.36 on carload of lumber from Vian, Ind. T., to Stoughton, Wis., on account of misrouting.

3564. *Copper Queen Consolidated Mining Company v. El Paso & Southwestern Railroad Company*. January 27, 1909. Refund of \$378.83 on carload of pig iron from Gadsden, Ala., to Douglas, Ariz., on account of excessive rate.

3577. *Codling-McEwen Lumber Company v. Pennsylvania Railroad Company et al.* March 9, 1909. Waiving collection of \$3.97 on carload of lumber from North Wilkesboro, N. C., to Liddonfield, Pa., on account of excessive rate.

3586. *Sanitary Earthenware Specialty Company v. Pennsylvania Railroad Company*. November 3, 1908. Refund of \$35.51 on 2 carloads of clay from Philadelphia, Pa., to Trenton, N. J., on account of excessive rate.

3589. *Eagle Milling Company v. Southern Pacific Company et al.* March 19, 1909. Refund of \$1,184.44 on 7 carloads of barley from Hausen Junction to Tucson, Ariz., on account of excessive rate.

3594. *Armour & Company v. St. Louis & San Francisco Railroad Company et al.* January 6, 1909. Refund of \$45.67 on 6 carloads of dressed meats, etc., from Kansas City, Mo., to New Orleans, La., on account of excessive rate.

3596. *F. W. Harding v. Atchison, Topeka & Santa Fe Railway Company*. February 20, 1909. Refund of \$62.91 on carload of plaster from Lakewood, N. Mex., to Santa Ana, Cal., on account of excessive rate.

3597. *L. E. West v. Southern Pacific Company*. February 13, 1909. Refund of \$132.56 on 6 carloads of cattle from Edgewood, Cal., to Portland, Oreg., on account of excessive rate.

3600. *Ford Motor Company v. Chicago, Milwaukee & St. Paul Railway Company et al.* November 30, 1908. Refund of \$24.60 on carload of automobiles from Chicago, Ill., to Denver, Colo., on account of excessive minimum carload weight.

3608. *Lutz Brothers v. Union Pacific Railroad Company et al.* December 10, 1908. Refund of \$19.88 on carload of apples from Chicago, Ill., to Beloit, Kans., on account of excessive rate.

3611. *E. T. Graham v. Chicago & Northwestern Railway Company et al.* March 25, 1909. Refund of \$93.60 on 6 carloads of cattle from Maneta, Wyo., to Creston, Nebr., on account of excessive rate.

3613. *John Deere Plow Company v. Chicago, Rock Island & Pacific Railway Company*. March 24, 1909. Refund of \$61.57 on carload of wagons from Moline, Ill., to Fitzhugh, Ark., on account of misrouting.

3614. *Relief of Agent Vandalia Railroad v. Chicago, Rock Island & Pacific Railway Company*. February 10, 1909. Payment of \$38.35 on carload of hay from Mesa, Ark., to Peoria, Ill., on account of misrouting.

3617. *W. R. Pickering Lumber Company v. Gulf, Colorado & Santa Fe Railway Company.* December 2, 1908. Refund of \$40.09 on carload of lumber from Cravens, La., to Thurber Junction, Tex., on account of excessive rate.

3637. *Haley & Lang Company v. Illinois Central Railroad Company.* February 3, 1909. Refund of \$13 on shipment of pineapples from Jacksonville, Fla., to Sioux City, Iowa, on account of excessive rate.

3638. *H. L. Crown & Company v. Illinois Central Railroad Company.* January 2, 1909. Refund of \$6 on carload of cheese from Monroe, Wis., to Chicago, Ill., on account of excessive rate.

3640. *N. K. Fairbank Company v. Illinois Central Railroad Company.* November 18, 1908. Refund of \$10.59 on 4 shipments of oil, etc., from various points to St. Louis, Mo., on account of excessive switching charges.

3642. *Lyon Cypress Lumber Company v. Illinois Central Railroad Company.* November 12, 1908. Refund of \$4.07 on carload of lumber from Garyville, La., to Robinson, Ill., on account of excessive rate.

3643. *Ast & Regez v. Illinois Central Railroad Company.* March 19, 1909. Refund of \$8.08 on shipment of cheese from Dodgeville, Wis., to Chicago, Ill., on account of excessive rate.

3644. *Glauser & Ladrack Company v. Illinois Central Railroad Company.* January 2, 1909. Refund of \$82.82 on 9 shipments of cheese from Monticello, Wis., to Chicago, Ill., on account of excessive rate.

3645. *Glauser-Ladrack Company v. Illinois Central Railroad Company.* January 2, 1909. Refund on shipment of cheese from Belleville, Wis., to Chicago, Ill., on account of excessive rate. Order entered in No. 3644 covering this shipment.

3646. *Glauser-Ladrack Company v. Illinois Central Railroad Company.* January 2, 1909. Refund on shipment of cheese from Blanchardville, Wis., to Chicago, Ill., on account of excessive rate. Order entered in No. 3644 covering this shipment.

3647. *Glauser-Ladrack Company v. Illinois Central Railroad Company.* January 2, 1909. Refund on shipment of cheese from Dodgeville, Wis., to Chicago, Ill., on account of excessive rate. Order entered in No. 3644 covering this shipment.

3648. *Glauser-Ladrack Company v. Illinois Central Railroad Company.* January 2, 1909. Refund of 4 carloads of cheese from Hollandale, Wis., to Chicago, Ill., on account of excessive rate. Order entered in No. 3644 covering this shipment.

3649. *Glauser-Ladrack Company v. Illinois Central Railroad Company.* January 2, 1909. Refund on shipment of cheese from Hollandale, Wis., to Chicago, Ill., on account of excessive rate. Order entered in No. 3644 covering this shipment.

3651. *Crosby & Meyers v. Illinois Central Railroad Company.* January 5, 1909. Refund of \$11.62 on shipment of cheese from Dodgeville, Wis., to Chicago, Ill., on account of excessive rate.

3652. *Grunert Cheese Company v. Illinois Central Railroad Company.* January 2, 1909. Refund of \$7 on shipment of cheese from Blanchardville, Wis., to Chicago, Ill., on account of excessive rate.

3653. *Stauffacher & Roth v. Illinois Central Railroad Company.* January 11, 1909. Refund of \$6.54 on shipments of cheese from Monroe, Wis., to Chicago, Ill., on account of excessive rate.

3654. *Jacob Karlen & Son. v. Illinois Central Railroad Company.* January 5, 1909. Refund on 2 shipments of cheese from Monroe, Wis., to Chicago, Ill., on account of excessive rate. Order entered in No. 4009 covering these shipments.

3655. *Sprague-Warner & Company v. Illinois Central Railroad Company.* January 2, 1909. Refund of \$12.75 on shipment of cheese from Monroe, Wis., to Chicago, Ill., on account of excessive rate.

3658. *Pacific Coast Rubber Company v. Oregon Railroad & Navigation Company.* February 8, 1909. Refund of \$486.13 on shipment of bicycles from Toledo, Ohio, to Portland, Oreg., on account of excessive rate.

3667. *Anti-Trust Oil Company v. Colorado & San Francisco Railway Company.* October 17, 1908. Refund of \$10.66 on carload of gasoline from Niotaze, Kans., to Denver, Colo., on account of excessive rate.

3670. *United Metals Selling Company v. Galveston, Harrisburg & San Antonio Railway Company et al.* January 15, 1909. Refund of \$817.70 on 3 carloads of copper bullion from Clifton, Ariz., to New Orleans, La., on account of excessive rate.

3671. *Arizona Copper Company v. Galveston, Harrisburg & San Antonio Railway Company et al.* February 26, 1909. Refund of \$318.22 on 9 carloads of lumber from various points to Clifton, Ariz., on account of excessive rate.

3675. *J. E. Stewart Produce Company v. Chicago & North Western Railway Company.* November 9, 1908. Refund of \$4.50 on shipment of potatoes from Rosholt, Wis., to Poplar Bluff, Mo., on account of misrouting.

3678. *William Byrne v. Missouri Pacific Railway Company.* March 10, 1909. Refund of \$2 on carload of brick from Altoona, Kans., to South Omaha, Nebr., on account of nonabsorption of switching charges.

3680. *Roy Shirkey v. Louisiana Railway & Navigation Company.* December 29, 1908. Refund of \$72.90 on 6 carloads of hay from Stuttgart, Ark., to New Orleans, La., on account of excessive rate.

3688. *Grand Rapids Grain & Milling Company v. Lake Shore & Michigan Southern Railway Company.* March 30, 1909. Refund of \$8 on shipment of oil meal from East Toledo, Ohio, to Grand Rapids, Mich., on account of misrouting.

3692. *Nibley-Channel Lumber Company v. Oregon Short Line Railroad Company.* December 2, 1908. Refund of \$60.40 on carload of coal from Erie, Colo., to Twin Falls, Idaho, on account of excessive rate.

3693. *Crunden Martin Woodenware Company v. St. Louis & San Francisco Railroad Company.* January 6, 1909. Refund of \$1.26 on shipment of ax handles from Campbell, Mo., to Colorado, Tex., on account of misrouting.

3706. *Richards & Cunningham v. Chicago & North Western Railway Company.* March 16, 1909. Refund of \$434.54 on 5 carloads of flour, etc., from Creighton and Oakdale, Nebr., to Casper, Wyo., on account of excessive rate.

3708. *Dupont Powder Company v. Chicago & North Western Railway Company et al.* March 9, 1909. Refund of \$15.18 on carload of powder from Pleasant Prairie, Wis., to Christopher, Ill., on account of excessive rate.

3712. *Western Elaterite Roofing Company v. Texarkana & Fort Smith Railway Company.* November 27, 1908. Refund of \$68.31 on carload of asphaltum from Port Arthur, Tex., to Denver, Colo., on account of excessive rate.

3715. *Acme Milling Company v. Cleveland, Cincinnati, Chicago & St. Louis Railway Company.* January 2, 1909. Refund of \$9.80 on shipment of flour from Indianapolis, Ind., to Louisville, Ky., on account of excessive rate.

3716. *Acme Milling Company v. Cleveland, Cincinnati, Chicago & St. Louis Railway Company.* January 2, 1909. Refund on shipment of flour from Indianapolis, Ind., to Louisville, Ky., on account of excessive rate. Order entered in No. 3715 covering this shipment.

3719. *Plymouth Cordage Company v. New York, New Haven & Hartford Railroad Company.* December 3, 1908. Refund of \$14.60 on shipment of sisal from Boston, Mass., to Welland, Ontario, on account of excessive rate.

3726. *National Electrolytic Company v. Pennsylvania Railroad Company.* February 15, 1909. Refund of \$3 on shipment of chlorate of potash from Niagara Falls, N. Y., to Newark, N. J., on account of misrouting.

3727. *Kerr, Gifford & Company v. Northern Pacific Railway Company.* March 2, 1909. Refund of \$43.10 on shipment of jute bags from Portland, Oreg., to Tacoma, Wash., on account of excessive rate.

3735. *Copper Queen Reduction Works v. El Paso & Southwestern Railroad Company et al.* March 30, 1909. Refund of \$176.19 on carload of chrome ore from Valleys Junction, Cal., to Douglas, Ariz., on account of excessive rate.

3748. *Jac. Stich v. Illinois Central Railroad Company.* December 14, 1908. Refund of \$216.88 on shipments of tomatoes from East St. Louis, Ill., to New Orleans, La., on account of excessive rate.

3751. *Rhodes & Williams v. Pennsylvania Railroad Company.* November 24, 1908. Refund of \$34.90 on shipment of steam pumps from Alexandria, Va., to Stuttgart, Ark., on account of misrouting.

3754. *Beebe & Runyan Furniture Company v. Chicago, Rock Island & Pacific Railway Company.* February 5, 1909. Refund of \$7.92 on carload of furniture from Omaha, Nebr., to Lebanon, Kans., on account of excessive rate.

3758. *H. W. Rogers & Brothers v. Chicago, Rock Island & Pacific Railway Company.* December 10, 1908. Refund of \$4.63 on 2 carloads of corn from Omaha, Nebr., to Illinois, Ill., on account of excessive rate.

3763. *Clinton Sugar Refining Company v. Chicago & North Western Railway Company*. January 30, 1909. Refund of \$27.92 on 2 carloads of corn from Round Grove, Ill., to Clinton, Iowa, on account of excessive rate.

3764. *G. A. Holton v. Cincinnati, New Orleans & Texas Pacific Railway Company*. January 7, 1909. Refund of \$12 on 2 carloads of straw from Dry Ridge, Ky., to Cincinnati, Ohio, on account of excessive rate.

3766. *Standard Oilcloth Company v. Delaware, Lackawanna & Western Railroad Company*. February 3, 1909. Refund of \$17.21 on 20 carloads of oilcloth from Athenia, N. J., to New York, on account of excessive rate.

3767. *American Agricultural Chemical Company v. Delaware, Lackawanna & Western Railroad Company et al.* March 23, 1909. Refund of \$156.81 on 8 carloads of ammonia from Lackawanna, N. Y., to Carteret, N. J., on account of excessive rate.

3768. *Carbon Springs Water Ice Company v. Central Railroad Company of New Jersey et al.* February 6, 1909. Refund of \$161.17 on shipment of ice from Little Gap, Pa., to Somerville, N. J., on account of excessive rate.

3779. *B. F. Tyler Commission Company v. Chicago, Burlington & Quincy Railroad Company*. December 16, 1908. Refund of \$6.73 on carload of hay from Kansas City, Mo., to Kirkwood, Ill., on account of excessive rate.

3783. *North Brothers v. Chicago, Burlington & Quincy Railroad Company*. March 19, 1909. Refund of \$6.12 on carload of hay from Deering, Kans., to Moline, Ill., on account of excessive rate.

3787. *Sunset Fuel & Feed Company v. Southern Pacific Company*. March 30, 1909. Refund of \$161.69 on shipments of coal from Gallup, N. Mex., to Winthrop, Cal., on account of excessive rate.

3792. *E. Griswold & Company v. Southern Pacific Company et al.* January 16, 1909. Refund of \$56.11 on shipment of crude soda from Mirage, Nev., to Carleton, Cal., on account of excessive rate.

3795. *Townley Shingle Company v. St. Louis Southwestern Railway Company*. March 16, 1909. Refund of \$53.25 on shipment of handles from Townley, Mo., to Louisville, Ky., on account of excessive rate.

3798. *Duluth Log Company v. Chicago, St. Paul, Minneapolis & Omaha Railway Company*. December 1, 1908. Refund of \$9.81 on shipment of posts from Hawthorne, Wis., to Greenfield, Ill., on account of excessive car capacity.

3802. *Shoal Creek Coal Company v. Toledo, St. Louis & Western Railroad Company*. March 19, 1909. Refund of \$15.47 on carload of coal from Panama, Ill., to Van Buren, Ind., on account of excessive minimum carload weight.

3808. *Armour & Company v. Union Pacific Railroad Company*. February 9, 1909. Refund of \$230.36 on 4 carloads of fresh meats, etc., from South Omaha, Nebr., to Denver, Colo., on account of excessive minimum carload weight.

3810. *Phoenix Railway Company v. Atchison, Topeka & Santa Fe Railway Company*. November 21, 1908. Refund of \$334.10 on 3 carloads of ties from East San Pedro, Cal., to Phoenix, Ariz., on account of excessive rate.

3811. *W. D. Reeves Lumber Company v. Yazoo & Mississippi Valley Railroad Company*. November 25, 1908. Refund of \$6.30 on shipment of lumber from Helena, Ark., to Columbus, Ohio, on account of misrouting.

3815. *Menefee Cypress Company (Limited) v. Galveston, Harrisburg & San Antonio Railway Company et al.* December 18, 1908. Refund of \$16.86 on carload of lumber from Berwick, La., to Palacios, Tex., on account of excessive rate.

3824. *Armour & Company v. Delaware, Lackawanna & Western Railroad Company*. January 28, 1909. Refund of \$31.20 on shipment of dressed beef from Scranton, Pa., to Elmira, N. Y., on account of excessive rate.

3826. *Holly Sugar Company v. Atchison, Topeka & Santa Fe Railway Company*. December 30, 1908. Refund of \$277.39 on 4 carloads of molasses from Holly, Cal., to Tarkio, Mo., on account of misrouting.

3829. *Cloquet Lumber Company v. Northern Pacific Railway Company et al.* March 16, 1909. Refund of \$11.25 on shipment of lumber from Cloquet, Minn., to Oakland, Nebr., on account of excessive rate.

3833. *Naylor & Company v. Central Railroad Company of New Jersey et al.* March 5, 1909. Refund of \$256.22 on 51 carloads of pyrites from Bayonne, N. J., to Emans, Pa., on account of excessive rate.

3834. *Mathieson Alkali Works v. Norfolk & Western Railway Company et al.* January 25, 1909. Refund of \$56.02 on carload of caustic soda from Saltville, Va., to Bridgeport, Pa., on account of excessive rate.

3835. *Finkleine Lumber Company v. Illinois Central Railroad Company.* March 31, 1909. Refund of \$57.10 on 6 carloads of lumber from Wiggins, Miss., to St. Charles, Mo., on account of excessive rate.

3836. *J. J. Callahan v. Delaware & Hudson Company.* December 19, 1908. Refund of \$79.75 on 2 carloads of stone from Whitehall, N. Y., to Rutland, Vt., on account of excessive rate.

3837. *Lingo-Leeper Company v. Missouri, Kansas & Texas Railway Company.* February 1, 1909. Refund of \$102.69 on 3 carloads of lumber from Stringtown, Okla., to Denison and Sadler, Tex., on account of excessive rate.

3846. *Robinson-Davis Lumber Company v. St. Louis & San Francisco Railroad Company.* March 11, 1909. Refund of \$27.43 on carload of sand from Kansas City, Mo., to Neosho, Mo., on account of excessive rate.

3852. *J. Rosenbaum Grain Company v. St. Louis & San Francisco Railroad Company.* March 30, 1909. Refund of \$1.25 on shipment of mineral paint from Cincinnati, Ohio, to North Fort Worth, Tex., on account of misrouting.

3856. *T. W. Simonds & Son v. Ocean Steamship Company, of Savannah et al.* March 27, 1909. Refund of \$175.80 on shipment of fertilizer from New York, N. Y., to Lanigkat, Ga., on account of excessive rate.

3857. *J. P. Williams Company v. Central of Georgia Railway Company.* December 14, 1908. Refund of \$23.94 on 5 carloads of rosin and turps from Turps, Ala., to Savannah, Ga., on account of excessive rate.

3865. *Johnson & Bowles v. Southern Pacific Company.* February 27, 1909. Refund of \$103.52 on carload of flour from Colton, Cal., to Yuma, Ariz., on account of excessive rate.

3868. *Barotaria Canning Company v. Louisville & Nashville Railroad Company.* November 21, 1908. Refund of \$41.69 on shipment of coke from Boyles, Ala., to Biloxi, Miss., on account of excessive rate.

3869. *Illinois Pacific Glass Company v. San Pedro, Los Angeles & Salt Lake Railroad Company et al.* Refund of \$263.50 on 2 carloads of demijohns from Olean, N. Y., to Los Angeles, Cal., on account of excessive rate.

3883. *Arizona Orange Association v. Maricopa & Phoenix Railroad Company.* February 5, 1909. Refund of \$28.52 on carload of oranges from Phoenix, Ariz., to Des Moines, Iowa, on account of excessive rate.

3884. *Arizona Orange Association v. Maricopa & Phoenix Railroad Company et al.* February 5, 1909. Refund of \$28.51 on carload of oranges from Phoenix, Ariz., to Chicago, Ill., on account of excessive rate.

3885. *American Brake Shoe and Foundry Company v. Southern Railway Company et al.* February 6, 1909. Refund of \$4.21 on shipment of brake shoes from Chattanooga, Tenn., to Millen, Ga., on account of excessive rate.

3886. *Arizona Power Company v. Atchison, Topeka & Santa Fe Railway Company et al.* November 13, 1908. Refund of \$281.20 on 10 carloads of cement from Portland, Colo., to Blue Bell, Ariz., on account of excessive rate.

3890. *Merchants and Planters' Oil Company v. Houston & Texas Central Railroad Company.* December 15, 1908. Refund of \$47.50 on shipment of oil from Houston, Tex., to Denver, Colo., on account of excessive minimum carload weight.

3892. *Twin Buttes Mining and Smelting Company v. Southern Pacific Company.* November 18, 1908. Refund of \$446.99 on shipment of crude oil from Oil City, Cal., to Tucson, Ariz., on account of excessive rate.

3893. *Brunswick Consolidated Mining Company v. Southern Pacific Company et al.* December 22, 1908. Refund of \$77.17 on carload of iron ore from Brunswick, Nev., to San Francisco, Cal., on account of excessive rate.

3894. *Walter T. Bradley Company v. Philadelphia & Reading Railway Company.* December 7, 1908. Refund of \$26.61 on carload of lime screenings from Palmyra, Pa., to Yorktown, N. J., on account of excessive rate.

3903. *Woodruff-Kroy Company v. St. Louis & San Francisco Railroad Company.* December 2, 1908. Refund of \$9.34 on 2 carloads of staves from Kennett, Mo., to Davenport, Iowa, on account of misrouting.

3906. *C. R. Cummings Export Company v. Morgan's Louisiana & Texas Railroad & Steamship Company*. March 24, 1909. Refund of \$12.81 on shipment of chain dogs from New Orleans, La., to Fuqua, Tex., on account of excessive rate.

3908. *E. H. Young v. Illinois Central Railroad Company et al.* January 9, 1909. Refund of \$837.76 on 4 carloads of cotton-seed cake from Gardis, Miss., to Galveston, Tex., on account of excessive rate.

3909. *New York, New Haven & Hartford Railroad Company v. St. Louis & San Francisco Railroad Company*. January 16, 1909. Payment of \$10.52 on carload of cotton from Altus, Okla., to East Hampton, Mass., on account of misrouting.

3911. *B. F. Tyler Commission Company v. St. Louis & San Francisco Railroad Company*. December 31, 1908. Refund of \$12 on carload of hay from Kansas City, Mo., to Cape Girardeau, Mo., on account of excessive rate.

3914. *Northern Iron Company v. Delaware & Hudson Company*. December 23, 1908. Refund of \$2.06 on shipment of iron castings from Wilkes-Barre, Pa., to Standish, N. Y., on account of excessive rate.

3923. *Barrett Grocery Company v. Illinois Central Railroad Company et al.* March 16, 1909. Refund of \$629.18 on 14 carloads of sugar from New Orleans, La., to Lexington, Miss., on account of excessive rate.

3924. *Swift & Company v. El Paso & Southwestern Railroad Company*. January 28, 1909. Refund of \$126.47 on carload of packing-house products from El Paso, Tex., to Bisbee, Ariz., on account of excessive rate.

3926. *J. J. Caine v. Pennsylvania Railroad Company et al.* December 14, 1908. Refund of \$82.54 on carload of scrap iron from Columbia, S. C., to Phoenixville, Pa., on account of excessive rate.

3931. *E. Datta v. Southern Pacific Company*. November 9, 1908. Refund of \$75.60 on carload of lime from New Castle, Cal., to Elko, Nev., on account of excessive rate.

3935. *Elko Lumber Company v. Southern Pacific Company*. November 4, 1908. Refund of \$60.84 on carload of lime from New Castle, Cal., to Elko, Nev., on account of excessive rate.

3937. *Duluth Log Company v. Chicago, St. Paul, Minneapolis & Omaha Railway Company*. December 21, 1908. Refund of \$11.40 on carload of posts from Hawthorne, Wis., to Marcus, Iowa, on account of larger car furnished than ordered.

3939. *A. Morrison & Co. v. St. Louis & San Francisco Railroad Company*. January 6, 1909. Refund of \$64.80 on carload of potatoes from Spencer, Okla., to Amarillo, Tex., on account of excessive rate.

3942. *White Crystal Lime Company v. Oregon Railroad & Navigation Company*. December 14, 1908. Refund of \$219.66 on 8 cars of lime from Nelson Siding, Oreg., to Boise, Idaho, on account of excessive rate.

3944. *Virginia-Carolina Chemical Company v. Houston & Shreveport Railroad Company et al.* November 17, 1908. Refund of \$9.60 on carload of fertilizer from Shreveport, La., to Timpson, Tex., on account of excessive rate.

3947. *F. L. Botsford Company, Incorporated, v. Southern Pacific Company Lines in Oregon*. December 30, 1908. Refund of \$16.94 on car of lumber from Marcola, Oreg., to Hazen, Nebr., on account of excessive rate.

3951. *Schnelle & Quirl Lumber Company v. Illinois Central Railroad Company*. December 4, 1908. Refund of \$2 on carload of lumber from Stevens, Miss., to St. Louis, Mo., on account of excessive rate.

3955. *Burnham, Williams & Co. v. Philadelphia & Reading Railway Company*. November 21, 1908. Refund of \$142.14 on shipments of cord wood from Williamstown, N. J., to Eddystone, Pa., on account of excessive rate.

3962. *Valley Milling Company v. Gila Valley, Globe & Northern Railway Company*. February 5, 1909. Refund of \$20 on grain shipments from Geronimo, Ariz., to Safford, Ariz., on account of excessive rate.

3965. *Alan Wood, Iron & Steel Company v. Philadelphia & Reading Railway Company*. November 21, 1908. Refund of \$11.76 on shipment of sheet iron from Philadelphia, Pa., to Standish, N. Y., on account of excessive rate.

3966. *C. C. Smoot & Sons v. Southern Railway Company*. January 22, 1909. Refund of \$522.60 on 44 carloads of bark from Stuart, Va., to North Wilkesboro, N. C., on account of excessive rate.

3969. *Clement & Clement v. Norfolk & Western Railway*. January 12, 1909. Refund of \$41.34 on 4 carloads of cattle from Circleville, Ohio, to Danville, Va., on account of excessive rate.

3970. *Laurence Hensley Fruit Company v. Chicago, Rock Island & Pacific Railway Company et al.* November 27, 1908. Refund of \$542.41 on 8 carloads of bananas and cocoanuts from New Orleans, La., to Denver, Colo., on account of excessive rate.

3983. *Benton Manufacturing Company v. Central of Georgia Railway Company et al.* November 21, 1908. Refund of \$13.98 on shipment of agricultural implements from Monticello, Ga., to Memphis, Tenn., on account of excessive rate.

3993. *Homer Earl v. Chicago, Burlington & Quincy Railroad Company*. January 5, 1909. Refund of \$42 on carload of silica from Woodruff, Kans., to Chicago, Ill., on account of excessive rate.

4004. *E. G. Garcia & Company v. Atchison, Topeka & Santa Fe Railway Company*. December 15, 1908. Refund of \$664.81 on 15 carloads of wool in grease from Holbrook and Winslow, Ariz., to Albuquerque, N. Mex., on account of excessive rate.

4005. *Copper Queen Consolidated Mining Company v. El Paso & Southwestern System*. January 12, 1909. Refund of \$255.25 on 2 carloads of hay from McQueen Spur, Ariz., to Bisbee, Ariz., on account of excessive rate.

4009. *Jacob Karlen & Son v. Illinois Central Railroad Company*. January 5, 1909. Refund of \$44.61 on 4 carloads of cheese from Monroe, Wis., to Chicago, Ill., on account of excessive rate.

4010. *National Grocery Company v. Wisconsin & Michigan Railway Company et al.* February 1, 1909. Refund of \$48.36 on carload of sugar from Menominee, Mich., to Sault Ste. Marie, Mich., on account of excessive rate.

4020. *Empson Packing Company v. Colorado & Southern Railway Company et al.* December 22, 1908. Refund of \$94.60 on shipment of canned peas from Greeley, Colo., to Cleveland, Ohio, on account of excessive rate.

4022. *C. S. True v. Oregon Railroad & Navigation Company et al.* February 5, 1909. Refund of \$152.45 on 2 cars of hay from New Plymouth, Idaho, and Nyssa, Oreg., to Hood River, Oreg., on account of excessive rate.

4025. *Merchants' Grocery Company v. New Orleans & Northeastern Railroad Company*. December 23, 1908. Refund of \$85.50 on shipments of rice from Beaumont, Tex., to Hattiesburg, Miss., on account of excessive rate.

4026. *Pullen Produce Company v. New Orleans & Northeastern Railroad Company et al.* December 23, 1908. Refund of \$28.50 on shipment of rice from Beaumont, Tex., to Hattiesburg, Miss., on account of excessive rate.

4028. *Hazelwood Company v. Oregon Railroad & Navigation Company et al.* February 5, 1909. Refund of \$13.44 on carload of hay from Payette, Idaho, to Spokane, Wash., on account of excessive rate.

4029. *McReynolds & Company v. Oregon Railroad & Navigation Company et al.* December 1, 1908. Refund of \$526.33 on 6 carloads of hay from Nyssa and Arcadia, Oreg., to Hood River, Oreg., on account of excessive rate.

4031. *Charles Chapman v. Quincy, Omaha & Kansas City Railroad Company*. January 22, 1909. Refund of \$13.75 on shipment of hay from La Belle, Mo., to Quincy, Ill., on account of excessive rate.

4033. *Chicago Produce Company v. Pere Marquette Railroad Company*. March 17, 1909. Refund of \$145.43 on shipments of potatoes from Big Rapids, Mich., to Chicago, Ill., on account of excessive rate.

4037. *Kerr Gifford Company v. Oregon Railroad & Navigation Company*. March 30, 1909. Refund of \$573.69 on 2 carloads of wheat from Bourbon, Oreg., to Murray and Salt Lake City, Utah, on account of excessive rate.

4038. *W. D. Marshall Company v. Louisiana Western Railroad Company et al.* January 8, 1909. Refund of \$316.80 on 3 carloads of rice bran from Eagle Lake, Tex., to Crowley, La., on account of excessive rate.

4043. *Merchants' Grocery Company v. New Orleans & Northeastern Railroad Company et al.* January 4, 1909. Refund of \$42.75 on shipment of rice from Beaumont, Tex., to Hattiesburg, Miss., on account of excessive rate.

4045. *Clymer Manufacturing Company v. New York, Chicago & St. Louis Railroad Company et al.* March 3, 1909. Refund of \$37 on 1 carload of sand from Conneaut, Ohio, to Indiana, Pa., on account of excessive rate.

4051. *Merchants' Grocery Company v. New Orleans & Northeastern Railroad Company et al.* February 3, 1909. Refund of \$28.50 on shipment of rice from Beaumont, Tex., to Hattiesburg, Miss., on account of excessive rate.

4057. *Schoening-Koenigsmark Milling Company v. St. Louis, Iron Mountain & Southern Railway Company.* January 29, 1909. Refund of \$8.84 on carload of flour from Prairie du Rocher, Ill., to Columbus, Miss., on account of misrouting.

4058. *Standard Slate Corporation v. Chesapeake & Ohio Railway Company.* February 16, 1909. Refund of \$12.20 on shipment of roofing slate from Esmont, Va., to Cincinnati, Ohio, on account of excessive rate.

4071. *United States Gypsum Company v. Chicago, Burlington & Quincy Railroad Company et al.* December 22, 1908. Refund of \$48 on carload of glass sand from Wedron, Ill., to Alabaster, Mich., on account of excessive rate.

4077. *Royal Lumber Company v. Baltimore & Ohio Railroad Company.* December 15, 1908. Refund of \$13.65 on carload of lumber from Ripley, W. Va., to Owen Sound, Ontario, on account of misrouting.

4078. *E. T. Hines Company v. Southern Railway Company.* February 16, 1909. Refund of \$58.96 on 4 carloads of rosin from Riderville, Ala., to Savannah, Ga., on account of excessive rate.

4079. *Globe Lumber Company v. Vicksburg, Shreveport & Pacific Railway Company.* March 30, 1909. Refund of \$8.22 on carload of lumber from Yellow Pine, La., to Marlin, Tex., on account of misrouting.

4091. *H. D. Lee Mercantile Company v. Missouri Pacific Railway Company et al.* January 22, 1909. Refund of \$10 on carload of berries and cabbages from Tyler, Tex., to Salina, Kans., on account of excessive rate.

4092. *Tremont Lumber Company v. Alabama & Vicksburg Railway Company.* March 15, 1909. Refund of \$3.92 on carload of lumber from Smithfield, La., to Conneaut, Ohio, on account of misrouting.

4094. *La Crosse Implement Company v. Chicago, Rock Island & Pacific Railway Company et al.* December 26, 1908. Refund of \$70.01 on 3 carloads of vehicles from Jackson, Mich., to Minneapolis, Minn., on account of excessive rate.

4096. *Brooklyn Heights Railroad Company v. Pennsylvania Railroad Company.* February 10, 1909. Refund of \$1.03 on carload of claw bars from Cheswick, Pa., to Brooklyn, N. Y., on account of misrouting.

4097. *Garden City Sand Company v. Chicago, Burlington & Quincy Railroad Company et al.* March 11, 1909. Collection waived of \$54.18 on shipment of molding sand from Rockport, Ind., to Fulton, Ill., on account of excessive rate.

4104. *Finkbine Lumber Company v. Illinois Central Railroad Company.* December 17, 1908. Refund of \$9.98 on 1 carload of lumber from Wiggins, Miss., to St. Charles, Mo., on account of excessive rate.

4106. *Armour & Company v. Seaboard Air Line Railway.* January 6, 1909. Refund of \$88 on 7 carloads of tankage and blood from Savannah, Ga., to Wilmington, N. C., on account of excessive rate.

4107. *Franklin Lumber, Feed & Supply Company v. Southern Railway Company et al.* January 27, 1909. Refund of \$7.44 on carload of lumber from Atlanta, Ga., to Franklin, N. C., on account of excessive rate.

4109. *St. Croix Paper Company v. Maine Central Railroad Company.* February 3, 1909. Refund of \$1,599.92 on 69 carloads of sand from McGeorges Pit, Me., to Woodland, Me., on account of excessive rate.

4112. *P. L. Weeks & Company v. Tampa Northern Railroad Company et al.* March 30, 1909. Refund of \$69.88 on 2 carloads of turpentine and rosin from Enville, Fla., to Savannah, Ga., on account of excessive rate.

4121. *H. Stacy Smith v. Cumberland Valley Railroad Company.* March 10, 1909. Refund of \$12 on shipment of stick chestnut-oak bark from Vesuvius, Va., to Newark, N. J., on account of misrouting.

4129. *Ady & Crowe Mercantile Company v. Colorado & Southern Railway Company.* February 5, 1909. Refund of \$44.49 on shipment of speltz from Wheatland, Wyo., to Denver, Colo., on account of excessive rate.

4134. *Armour & Company v. Chicago, Cincinnati & Louisville Railroad Company.* December 7, 1908. Refund of \$3.91 on carload of dry glue from Chicago, Ill., to Peru, Ind., on account of excessive rate.

4135. *Bertha Mineral Company v. Norfolk & Western Railway Company.* December 2, 1908. Refund of \$81.97 on shipment of zinc ashes from Philadelphia, Pa., to Pulaski, Va., on account of excessive rate.

4143. *H. F. Watson Company v. Baltimore & Ohio Railroad Company et al.* February 8, 1909. Refund of \$75.97 on 6 carloads of rags from Locust Point, Md., to Erie, Pa., on account of excessive rate.

4145. *Superior Hay Stacker Company v. Chicago, Burlington & Quincy Railroad Company.* March 26, 1909. Refund of \$112.14 on 6 carloads of agricultural implements from Linneus, Mo., to Minneapolis, Minn., on account of excessive rate.

4148. *Armour & Company v. Chicago, Burlington & Quincy Railroad Company et al.* December 31, 1908. Refund of \$56.61 on shipment of packing-house products from South Omaha, Nebr., to Lewiston, Mont., on account of excessive rate.

4151. *Duluth Log Company v. Chicago, St. Paul, Minneapolis & Omaha Railway Company et al.* January 12, 1909. Refund of \$11.02 on shipment of posts from Hawthorne, Wis., to Plymouth, Nebr., on account of larger car furnished than ordered.

4152. *Montgomery Lumber Company v. Central of Georgia Railway Company.* December 10, 1908. Refund of \$58.74 on shipment of crate material from Montgomery, Ala., to Arlington, Ga., on account of excessive rate.

4157. *A. H. Slocumb v. Atlantic Coast Line Railroad Company.* December 21, 1908. Refund of \$22.04 on shipment of rosin from Benson, N. C., to York, Pa., on account of excessive rate.

4164. *J. E. Bartlett Company v. Pere Marquette Railroad Company.* March 31, 1909. Refund of \$57.95 on shipments of brick from Toledo, Ohio, to Port Huron, Mich., on account of excessive rate.

4166. *Picker & Beardsley v. Chicago, Burlington & Quincy Railroad Company.* February 15, 1909. Refund of \$45.06 on 7 carloads of oats from Garden Grove, Iowa, to St. Louis, Mo., on account of excessive rate.

4167. *United Cooperage Company v. Pennsylvania Railroad Company et al.* February 10, 1909. Refund of \$7.80 on shipment of hoops from Minster, Ohio, to Reading, Pa., on account of misrouting.

4180. *American Hominy Company v. Pittsburg, Cincinnati, Chicago & St. Louis Railway Company.* March 25, 1909. Refund of \$6.48 on shipment of malt from Indianapolis, Ind., to Escanaba, Mich., on account of excessive minimum carload weight.

4182. *Albert Preston v. Chesapeake & Ohio Railway Company.* January 6, 1909. Refund of \$22.64 on shipment of ties from Paintsville, Ky., to Brookville, Pa., on account of misrouting.

4186. *Vail Cooperage Company v. Illinois Central Railroad Company.* March 19, 1909. Refund of \$5.37 on shipment of barrel heading from Kuttawa, Ky., to Hutchinson, Kans., on account of misrouting.

4187. *Dupont Powder Company v. Philadelphia & Reading Railway Company.* January 18, 1909. Refund of \$45.72 on 4 shipments of scrap iron from Thompson Point, N. J., to Wilmington, Del., on account of excessive rate.

4193. *American Window Glass Company v. Pennsylvania Railroad Company et al.* February 9, 1909. Refund of \$74.72 on shipment of window glass from Kane, Pa., to Jackson, Miss., on account of excessive rate.

4201. *C. T. Check & Son v. Southern Railway Company.* December 12, 1908. Refund of \$2.03 on shipment of cider from Richmond, Va., to Nashville, Tenn., on account of misrouting.

4226. *Cambridge Ice Company v. Boston & Maine Railroad.* December 26, 1908. Refund of \$775.56 on 28 carloads of ice from Brookline, N. H., to Cambridge, Mass., on account of excessive rate.

4232. *J. Rasmussen & Sons Company v. Chicago & North Western Railway Company et al.* March 19, 1909. Refund of \$74.03 on 23 carloads of brick from Galesburg, Ill., to Oshkosh, Wis., on account of excessive rate.

4234. *Copper Queen Consolidated Mining Company v. El Paso & Southwestern Railroad Company.* December 18, 1908. Refund of \$1,528.87 on carload of pig iron from Gadsden, Ala., to Douglas, Ariz., on account of excessive rate.

4238. *American Furniture Company v. Union Pacific Railroad Company et al.* February 19, 1909. Refund of \$44.55 on shipment of children's carriages and go-carts from Chicago, Ill., to Denver, Colo., on account of excessive rate.

4240. *A. Landau & Company v. New Orleans Great Northern Railroad Company.* March 30, 1909. Refund of \$35.74 on carload of green hides from Covington, La., to St. Louis, Mo., on account of excessive rate.

4247. *Jackson Lumber Company v. Central of Georgia Railway Company et al.* March 9, 1909. Refund of \$33.38 on 3 carloads of lumber from Lockhart, Ala., to Charleston, S. C., on account of excessive rate.

4250. *E. R. & D. C. Kalp v. Gulf, Colorado & Santa Fe Railway Company.* December 2, 1908. Refund of \$11.80 on shipment of oats from Granite, Okla., to Ballinger, Tex., on account of excessive rate.

4253. *Texas Portland Cement Company v. Chicago, Rock Island & Gulf Railway Company.* December 22, 1908. Refund of \$32.30 on shipment of cement from Iola, Kans., to Stratford, Tex., on account of excessive rate.

4260. *Balfour Guthrie & Company v. Oregon Railroad & Navigation Company.* February 8, 1909. Refund of \$55 on shipment of cement from Portland, Oreg., to Lewiston, Idaho, on account of misrouting.

4263. *Pape & Loose v. Quincy, Omaha & Kansas City Railroad.* December 4, 1908. Refund of \$16.71 on carload of baled hay from Ewing, Mo., to Quincy, Ill., on account of excessive rate.

4264. *W. D. Meyer v. Quincy, Omaha & Kansas City Railroad Company.* December 4, 1908. Refund of \$13 on carload of baled hay from Tolona, Mo., to Quincy, Ill., on account of excessive rate.

4270. *H. D. Lee Mercantile Company v. Missouri Pacific Railway Company et al.* January 23, 1909. Refund of \$9.60 on carload of cabbage from Willis, Tex., to Salina, Kans., on account of excessive rate.

4272. *Maley & Wertz v. Baltimore & Ohio Southwestern Railroad Company.* February 6, 1909. Refund of \$16.63 on shipments of lumber from Clay City, Ill., to Vincennes, Ind., on account of excessive rate.

4280. *Rowe & Company v. Pennsylvania Railroad Company et al.* February 5, 1909. Refund of \$43.89 on carload of brick from Mays Landing, N. J., to Bryn Mawr, Pa., on account of excessive rate.

4284. *J. C. Blume & Company v. Southern Railway Company et al.* January 27, 1909. Refund of \$212.20 on 9 carloads of watermelons from Blackville, S. C., to Pittsburgh, Pa., on account of excessive rate.

4290. *Robert G. Kay v. Atlantic Coast Line Railroad Company et al.* February 6, 1909. Refund of \$4 on carload of lumber from Parters Station, Fla., to Philadelphia, Pa., on account of excessive rate.

4291. *Iola Portland Cement Company v. Atchison, Topeka & Santa Fe Railway Company et al.* December 18, 1908. Refund of \$11.88 on shipment of cement from Iola, Kans., to Cuba, Kans., on account of excessive rate.

4302. *Robertson Paper Company v. Boston & Maine Railroad.* January 27, 1909. Refund of \$42.64 on 10 shipments of wrapping paper from Bellows Falls, Vt., to Holyoke, Mass., on account of excessive rate.

4307. *A. C. Davis & Company v. Chicago, Rock Island & Pacific Railway Company.* December 4, 1908. Refund of \$32.75 on shipment of corn and oats from Powhattan, Kans., to Kansas City, Mo., on account of excessive rate.

4312. *John Harstman Company v. Southern Pacific Company et al.* February 5, 1909. Refund of \$357.12 on shipment of crude soda from Mirage, Nev., to Redwood, Cal., on account of excessive rate.

4314. *Tremont Lumber Company v. Chicago, Rock Island & Pacific Railway Company.* December 10, 1908. Refund of \$8.13 on carload of lumber from Stovall, La., to Oak Harbor, Ohio, on account of misrouting.

4318. *Alpha Portland Cement Company v. Pennsylvania Railroad Company.* December 5, 1908. Refund of \$1.28 on shipment of cement from Martins Creek, Pa., to Stockton, N. J., on account of excessive rate.

4319. *J. C. Johnston & Company v. Chicago, St. Paul, Minneapolis & Omaha Railway Company.* January 11, 1909. Refund of \$19.84 on shipment of fuel wood from Haugen, Wis., to Luverne, Minn., on account of excessive rate.

4322. *Southern Bridge Company v. Southern Railway Company*. January 22, 1909. Refund of \$250.80 on 6 carloads of stone from Hiawatha, Ala., to Indianola, Miss., on account of excessive rate.

4326. *O. W. Ketcham v. Pennsylvania Railroad Company*. December 21, 1908. Refund of \$49.84 on 2 carloads of old broken saggars from Camden, N. J., to Crum Lynne, Pa., on account of excessive rate.

4328. *Crystal Ice Company v. Southern Railway Company*. December 22, 1908. Refund of \$39 on carload of ice from Atlanta, Ga., to Chattanooga, Tenn., on account of excessive rate.

4337. *Oermann & Blaebaum v. Pennsylvania Railroad Company*. December 4, 1908. Refund of \$42.48 on carload of building sand from Cockeysville, Md., to York, Pa., on account of excessive rate.

4338. *Standard Oil Company v. Southern Pacific Company*. December 9, 1908. Refund of \$416.84 on shipment of crude oil from Oil City, Cal., to Tucson, Ariz., on account of excessive rate.

4341. *Philip Klein v. Illinois Central Railroad Company*. March 25, 1909. Refund of \$22.33 on 2 carloads of wooden blocks from Grayville, Ill., to Evansville, Ind., on account of excessive rate.

4343. *Western Sugar Refining Company v. Southern Pacific Company*. December 11, 1908. Refund of \$45.50 on shipment of sugar from San Francisco, Cal., to Reno, Nev., on account of excessive rate.

4344. *Hallack & Howard Lumber Company v. Colorado Springs & Cripple Creek District Railway Company*. December 22, 1908. Refund of \$42.60 on shipment of lumber from Chana, N. Mex., to Victor, Colo., on account of misrouting.

4348. *Harvey Seed Company v. Louisville & Nashville Railroad Company*. December 8, 1908. Refund of \$4 on shipment of oyster shells from Biloxi, Miss., to Montgomery, Ala., on account of excessive rate.

4350. *American Sugar Refining Company v. Louisville & Nashville Railroad Company*. December 14, 1908. Refund of \$94.86 on shipment of sugar from New Orleans, La., to Carlisle, Ky., on account of excessive rate.

4351. *Katy Rice Milling Company v. Missouri, Kansas & Texas Railway Company of Texas*. February 17, 1909. Refund of \$190 on carload of rice from Katy, Tex., to Memphis, Tenn., on account of misrouting.

4357. *Phoenix Pottery Company v. Pennsylvania Railroad Company*. February 26, 1909. Refund of \$19.10 on carload of clay from Philadelphia, Pa., to Bordentown, N. J., on account of excessive rate.

4358. *Tyler & Simpson Company v. St. Louis & San Francisco Railroad Company*. February 6, 1909. Refund of \$66.10 on shipment of vinegar from Rogers, Ark., to Ardmore, Okla., on account of excessive rate.

4364. *Summit Lumber Company v. Chicago, Rock Island & Pacific Railway Company*. March 23, 1909. Refund of \$50.49 on carload of yellow pine from Randolph, La., to Portsmouth, Ohio, on account of misrouting.

4365. *Relief of Agent of Chicago, Milwaukee & St. Paul Railway Company v. Baltimore & Ohio Southwestern Railroad Company*. March 13, 1909. Refund of \$12 on shipment of canned tomatoes from Charlestown, Ind., to Sioux City, Iowa, on account of misrouting.

4367. *Lee Marble Works v. New York, New Haven & Hartford Railroad Company*. December 19, 1908. Refund of \$287.93 on 13 carloads of sand from Clinton, Conn., to Lee, Mass., on account of excessive rate.

4375. *Cenedella Company v. New York, New Haven & Hartford Railroad Company*. March 2, 1909. Refund of \$15.61 on 4 shipments of crushed stone from Rocky Hill, Conn., to Franklin, Mass., on account of excessive rate.

4379. *A. T. Johnson v. Northern Pacific Railway Company*. January 23, 1909. Refund of \$76.77 on 12 shipments of brick from Little Falls, Minn., to Carrington, N. Dak., on account of excessive rate.

4380. *Gardner, Peterson & Company v. Detroit & Mackinac Railway Company*. March 31, 1909. Refund of \$79.53 on 3 carloads of wood from Millersburg, Mich., to Chicago, Ill., on account of excessive rate.

8. *Cherokee Marble & Granite Works v. Southern Railway Company*. January 1909. Refund of \$96.95 on shipment of stone from Atlanta, Ga., to Greensboro, on account of excessive rate.

4397. *W. C. Quicksill v. Pennsylvania Railroad Company*. March 31, 1909. Refund of \$17.60 on carload of lime from Blue Bell, Pa., to Hornerstown, N. J., on account of excessive rate.

4400. *Dirie Cotton Company v. Wadley Southern Railway Company et al.* February 15, 1909. Refund of \$34.44 on 5 carloads of cotton from Swainsboro, Ga., to Piedmont and Seneca, S. C., on account of excessive rate.

4402. *V. M. D. Harrington v. Pennsylvania Railroad Company*. February 5, 1909. Refund of \$85.84 on 2 carloads of brick from Mays Landing, N. J., to Milford, Pa., on account of excessive rate.

4404. *King of Arizona Company v. Southern Pacific Company et al.* February 6, 1909. Refund of \$81.90 on carload of hay from Tempe, Ariz., to Mohawk, Ariz., on account of excessive rate.

4405. *James & Graham Wagon Company v. Mobile & Ohio Railroad Company et al.* February 20, 1909. Refund of \$168.48 on shipment of wagon felloes from Brooksville, Miss., to Memphis, Tenn., on account of excessive rate.

4406. *C. S. Morey Mercantile Company v. Denver & Rio Grande Railroad Company et al.* February 26, 1909. Refund of \$611.04 on 4 carloads of coffee from New Orleans, La., to Denver, Colo., on account of excessive rate.

4408. *Dakota Malt & Grain Company v. Union Pacific Railroad Company et al.* December 23, 1908. Refund of \$35.94 on carload of malt from Sioux Falls, S. Dak., to Boise, Idaho, on account of excessive rate.

4409. *W. C. Kirk & Company v. Pennsylvania Railroad Company*. February 23, 1909. Refund of \$21.62 on carload of cord wood from Risley, N. J., to West Philadelphia, Pa., on account of excessive rate.

4418. *Central Coal & Coke Company v. Union Pacific Railroad Company*. March 31, 1909. Refund of \$106.65 on 2 carloads of coal from Rock Springs, Wyo., to Lincoln, Nebr., on account of excessive rate.

4419. *Dravo Contracting Company v. Pittsburg & Lake Erie Railroad Company*. March 24, 1909. Refund of \$90 on 3 carloads of derricks and boilers from Elizabeth, Pa., to Blacksburg, S. C., on account of misrouting.

4425. *Arizona Sandstone Company v. Atchison, Topeka & Santa Fe Railway Company et al.* March 31, 1909. Refund of \$519.64 on 2 carloads of stone from Flagstaff, Ariz., to San Antonio, Tex., on account of excessive rate.

4432. *Manglesdorf Brothers Company v. Atchison, Topeka & Santa Fe Railway Company*. December 28, 1908. Refund of \$54.28 on shipment of onion sets from Atchison, Kans., to Oklahoma City, Okla., on account of excessive rate.

4434. *Forster Brothers v. Munising Railway Company et al.* March 31, 1909. Refund of \$42.90 on 5 carloads of ties from Munising, Mich., to Watertown, Wis., on account of excessive rate.

4436. *A. L. Rudolph v. Pennsylvania Railroad Company et al.* February 18, 1909. Refund of \$40.65 on carload of brick from Mays Landing, N. J., to Wissahickon, Pa., on account of excessive rate.

4439. *Morris & Company v. St. Louis & San Francisco Railroad Company*. March 13, 1909. Refund of \$15 on 3 carloads of packing-house products from National Stock Yards, Ill., to points in southeast, on account of excessive rate.

4440. *E. B. Corrigan Company v. St. Joseph & Grand Island Railway Company*. January 18, 1909. Refund of \$8 on carload of coal from Milwaukee, Wis., to Sabetha, Kans., on account of misrouting.

4447. *William Brothers Boiler & Manufacturing Company v. Chicago, Rock Island & Pacific Railway Company et al.* March 22, 1909. Refund of \$7.60 on shipment of castings from Goshen, Ind., to Minneapolis, Minn., on account of excessive rate.

4448. *American Bridge Company of New York v. Philadelphia & Reading Railway Company*. March 11, 1909. Refund of \$30.40 on 7 carloads of iron bars, plates, and castings from Pencoyd, Pa., to Edgemoor, Del., on account of excessive rate.

4450. *Wyatt Lumber Company v. Chicago, Rock Island & Pacific Railway Company*. January 6, 1909. Refund of \$36.47 on shipment of lumber from Wyatt, La., to Chanute, Kans., on account of misrouting.

4451. *Helmerts Manufacturing Company v. Atchison, Topeka & Santa Fe Railway Company et al.* March 31, 1909. Refund of \$211.98 on 19 shipments of iron beds, etc., from Kenosha, Wis., to Kansas City, Mo., on account of excessive rate.

4457. *San Antonio Meat Company v. San Pedro, Los Angeles & Salt Lake Railroad Company.* February 9, 1909. Refund of \$433.36 on 8 shipments of cattle and sheep from Lund, Utah, to Pomona, Cal., on account of excessive rate.

4459. *Naylor & Company v. Philadelphia & Reading Railway Company.* March 11, 1909. Refund of \$808.40 on 82 carloads of pyrites cinder from Camden (N. J.) Harbor to Pottstown and Reading, Pa., on account of excessive rate.

4463. *Lewis-Vidger-Loomis Company v. Northern Pacific Railway Company.* January 15, 1909. Refund of \$30 on carload of apples from Hamilton, Mont., to Fargo, N. Dak., on account of excessive rate.

4466. *P. M. Olsson Company v. Louisville & Nashville Railroad Company.* March 6, 1909. Refund of \$6 on shipment of potatoes from Waupaca, Wis., to Birmingham, Ala., on account of excessive rate.

4467. *Solomon-Wickersham Company v. Gila Valley, Globe & Northern Railway Company.* February 17, 1909. Refund of \$5 on shipment of barley from St. Thomas to Safford, Ariz., on account of excessive rate.

4472. *Edgar Lumber Company v. Chicago, Rock Island & Pacific Railway Company.* March 18, 1909. Refund of \$2.28 on shipment of lumber from Cornie, Ark., to Two Rivers, Wis., on account of misrouting.

4474. *S. Segari & Company v. Illinois Central Railroad Company.* January 25, 1909. Refund of \$265.73 on 5 carloads of tomatoes from East St. Louis, Ill., to New Orleans, La., on account of excessive rate.

4479. *Virginia-Carolina Chemical Company v. Atlantic Coast Line Railroad Company.* March 8, 1909. Refund of \$106.25 on 5 carloads of fertilizer material from Charleston, S. C., to Gainesville, Fla., on account of excessive rate.

4485. *Deere & Webber Company v. Chicago, Rock Island & Pacific Railway Company et al.* March 25, 1909. Refund of \$606.59 on 26 carloads of vehicles from Flint and Jackson, Mich., to Minneapolis, Minn., on account of excessive rate.

4489. *C. E. Murray v. Nashville, Chattanooga & St. Louis Railway.* March 11, 1909. Refund of \$24 on shipment of staves from Bon Aqua, Tenn., to Graysville, Ga., on account of excessive rate.

4501. *Ohmer Fare Register Company v. Yazoo & Mississippi Valley Railroad Company.* January 26, 1909. Refund of \$2.07 on shipment of cash registers from Vicksburg, Miss., to Dayton, Ohio, on account of misrouting.

4502. *Atlas Lumber & Shingle Company v. Chicago, Burlington & Quincy Railroad Company et al.* March 5, 1909. Collection waived of undercharge of \$62 on carload of lumber from Tacoma, Wash., to Alma, Nebr., on account of excessive minimum carload weight.

4506. *Brittain & Company v. Great Northern Railway Company et al.* March 5, 1909. Refund of \$13 on shipment of smoked meat from Marshalltown, Iowa, to Seattle, Wash., on account of excessive rate.

4522. *Canton Lumber Company v. Northern Central Railway Company et al.* February 17, 1909. Refund of \$17.04 on 2 carloads of lumber from Baltimore, Md., to Bloomsburg, Pa., on account of excessive rate.

4523. *Black Lake Lumber Company v. Illinois Central Railroad Company.* March 19, 1909. Refund of \$7 on shipment of lumber from Makanda, Ill., to Hedrick, Iowa, on account of misrouting.

4529. *David Whiting & Sons v. Boston & Maine Railroad.* January 12, 1909. Refund of \$337.87 on 7 carloads of ice from Keene, N. H., to Boston, Mass., on account of excessive rate.

4537. *William H. Moon v. Philadelphia & Reading Railway Company.* February 5, 1909. Refund of \$86.26 on carload of soil from Yardley, Pa., to Atlantic City, N. J., on account of excessive rate.

4538. *Perry Brothers Milling Company v. Southern Pacific Company.* March 5, 1909. Refund of \$85.96 on shipment of flour and mill stuffs from Ogden, Utah, to Winnemucca, Nev., on account of excessive rate.

4541. *Wilson Produce Company v. Southern Railway Company et al.* March 6, 1909. Refund of \$418.02 on 11 cars watermelons from Furman, S. C., to Pittsburg, Pa., on account of excessive rate.

4557. *H. H. Franklin Manufacturing Company v. Louisville & Nashville Railroad Company.* January 27, 1909. Refund of \$37.17 on 1 automobile from New Orleans, La., to Mobile, Ala., on account of excessive rate.

4558. *Virginia Portland Cement Company v. Chesapeake & Ohio Railway Company.* January 12, 1909. Refund of \$545.92 on returned shipment of cement from Washington, D. C., to Fordwick, Va., on account of excessive rate.

4562. *R. L. Blerins v. Virginia & Southwestern Railway Company.* March 22, 1909. Refund of \$28.63 on shipment of pig lead from Bristol, Va.-Tenn., to Elizabethton, Tenn., on account of excessive rate.

4569. *Tennessee Cotton Oil Company v. St. Louis & San Francisco Railroad Company.* February 5, 1909. Refund of \$18 on 1 carload of cotton seed from Evadale, Ark., to Memphis, Tenn., on account of excessive rate.

4582. *Gifford-Wood Company v. Boston & Albany Railroad Company.* February 17, 1909. Refund of \$15.50 on car of pig iron shipped from Bellefonte, Pa., to Hudson Upper, N. Y., on account of excessive rate.

4583. *C. A. Woods v. Atchison, Topeka & Santa Fe Railway Company.* March 25, 1909. Refund of \$94.77 on 1 car of apples shipped from Canton, Kans., to Manzanola, Colo., on account of excessive rate.

4597. *Draper Company v. Boston & Albany Railroad Company et al.* March 5, 1909. Refund of \$888.36 on 12 cars crushed stone from Westfield, Mass., to Northville, N. H., on account of excessive rate.

4600. *Singer Piano Company v. Chicago & Eastern Illinois Railroad Company.* March 30, 1909. Refund of \$32.48 on 3 shipments of pianos from Steger, Ill., to St. Louis, Mo., on account of excessive rate.

4601. *Obear-Nester Glass Company v. Missouri, Kansas & Texas Railway Company.* February 9, 1909. Refund of \$43.20 on 2 carloads sand from Klondyke, Mo., to Kansas City, Mo., on account of excessive rate.

4640. *Chicago Fire Brick Company v. Chicago & Eastern Illinois Railroad Company et al.* March 19, 1909. Refund of \$29.06 on shipment of flue lining from Brook, Ind., to Baraboo, Wis., on account of excessive rate.

4642. *M. A. Moore Company v. Chicago, St. Paul, Minneapolis & Omaha Railway Company.* February 3, 1909. Refund of \$11.25 on shipment of fuel wood from Washburn, Wis., to Le Mars, Iowa, on account of excessive rate.

4651. *Indiana Match Company v. Cleveland, Cincinnati, Chicago & St. Louis Railway Company.* February 2, 1909. Refund of \$1.21 on shipment of matches from Crawfordsville, Ind., to Decatur, Ala., on account of misrouting.

4659. *Henson & Pearson v. Philadelphia & Reading Railway Company et al.* February 17, 1909. Refund of \$11.24 on 2 carloads lumber from Port Richmond, Pa., to Asbury Park, N. J., on account of excessive rate.

4664. *Watson Malone & Sons v. Philadelphia & Reading Railway Company.* February 15, 1909. Refund of \$2.77 on shipment of shingles from Port Richmond, Pa., to Gloucester, N. J., on account of excessive rate.

4666. *Townley Shingle Company v. St. Louis Southwestern Railway Company.* February 5, 1909. Refund of \$67.66 on shipment of broom handles from Townley, Mo., to St. Louis, Mo., on account of excessive rate.

4667. *J. S. Kent Company v. Pennsylvania Railroad Company.* March 31, 1909. Refund of \$24.60 on 2 carloads shingles from Egg Harbor, N. J., to Elizabethtown, Pa., on account of excessive rate.

4668. *E. Ellsworth Smith v. West Jersey & Seashore Railroad Company et al.* March 22, 1909. Refund of \$19.60 on carload slag grit from Reading, Pa., to Atlantic City, N. J., on account of excessive rate.

4671. *Carl Florine v. Wells Fargo & Company Express and Adams Express Company.* February 8, 1909. Refund of \$2.47 on shipment of blackberries from Wathena, Kans., to Harvard, Nebr., on account of excessive rate.

4685. *Frick-Reid Supply Company v. Missouri, Kansas & Texas Railway Company et al.* February 8, 1909. Refund of \$81.06 on 2 shipments of oil-well supplies from Van Buren, Ind., to Bartlesville, Okla., on account of excessive rate.

4690. *Buckeye Iron & Brass Works v. Louisville & Nashville Railroad Company et al.* March 11, 1909. Refund of \$10.99 on shipment of scrap brass from New Orleans, La., to Dayton, Ohio, on account of excessive rate.

4691. *La Junta Milling & Elevator Company v. Atchison, Topeka & Santa Fe Railway Company et al.* March 18, 1909. Refund of \$164 on shipment of bran from La Junta, Colo., to Clifton, Ariz., on account of excessive minimum carload weight.

4696. *Watson Malone & Sons v. Philadelphia & Reading Railway Company et al.* February 20, 1909. Refund of \$5.16 on 2 carloads shingles from Philadelphia, Pa., to Bridgeton, N. J., on account of excessive rate.

4699. *Seymour Clark v. Delaware & Hudson Company et al.* March 17, 1909. Refund of \$367.52 on 16 carloads potatoes from Cadyville, N. Y., to Brooklyn, N. Y., on account of excessive rate.

4700. *Seymour Clark v. Delaware & Hudson Company et al.* March 31, 1909. Refund of \$110.41 on 14 carloads potatoes from Champlain Division points to Brooklyn, N. Y., on account of excessive rate.

4701. *Bissinger & Company v. Southern Pacific Company.* February 15, 1909. Refund of \$68 on shipment of dry hides from Reno, Nev., to San Francisco, Cal., on account of excessive rate.

4703. *Townley Shingle Company v. St. Louis Southwestern Railway Company.* February 16, 1909. Refund of \$225.34 on shipment of shingles and broom handles from Townley, Mo., to St. Louis, Mo., on account of excessive rate.

4708. *Charles W. Smith v. Colorado & Southern Railway Company.* March 31, 1909. Refund of \$250.80 on 6 carloads wool from Arthurs, Colo., to East Boston, Mass., on account of excessive rate.

4726. *O. O. Mickler v. Atlantic Coast Line Railroad Company.* March 31, 1909. Refund of \$18.15 on shipment of cotton-seed hulls from Columbia, S. C., to Callahan, Fla., on account of excessive rate.

4728. *American Linseed Company v. Chicago, Burlington & Quincy Railroad Company.* February 15, 1909. Refund of \$28.80 on 2 carloads oil meal from Minneapolis, Transfer, Minn., to St. Louis, Mo., on account of excessive rate.

4729. *Mankato Cement Works v. Chicago, St. Paul, Minneapolis & Omaha Railway Company.* March 30, 1909. Refund of \$12 on shipment of cement from Mankato, Minn., to Duluth, Minn., on account of excessive rate.

4732. *J. B. Malcolm & Company v. Pennsylvania Railroad Company et al.* March 24, 1909. Refund of \$53.60 on 2 carloads apple waste from Marion, N. Y., to St. Paul, Minn., on account of excessive rate.

4734. *M. R. Campbell v. Nashville, Chattanooga & St. Louis Railway Company.* February 6, 1909. Refund of \$46.09 on shipment of spokes from Madison Cross Roads, Ala., to Tullahoma, Tenn., on account of excessive rate.

4735. *John Dart v. Chesapeake & Ohio Railway Company.* March 27, 1909. Refund of \$85.28 on car of lumber from Dartmont, W. Va., to Rochester, N. Y., on account of misrouting.

4748. *E. V. Babcock & Company v. Pennsylvania Railroad Company.* March 25, 1909. Refund of \$16.12 on carload of lumber from Arrow, Pa., to Paterson, N. J., on account of excessive rate.

4755. *George A. Thorpe v. Southern Pacific Company.* February 20, 1909. Refund of \$145.70 on 3 carloads lumber from Truckee, Cal., to Austin, Nev., on account of excessive rate.

4763. *Kern Company, Limited, v. Morgan's Louisiana & Texas Railroad & Steamship Company.* February 26, 1909. Refund of \$16.50 on carload of staves from Port Barre, La., to New Orleans, La., on account of excessive rate.

4764. *J. E. Baker Company v. Pennsylvania Railroad Company et al.* March 13, 1909. Refund of \$402.59 on 17 carloads stone ballast and rough stone from Bainbridge, Pa., to Odenton, Md., on account of excessive rate.

4766. *Farrel Foundry & Machine Company v. New York, New Haven & Hartford Railroad Company.* March 27, 1909. Refund of \$10.92 on 5 shipments of iron castings from Ansonia, Conn., to South Providence, R. I., on account of excessive rate.

4782. *W. W. Cook & Son v. Atchison, Topeka & Santa Fe Railway Company.* February 26, 1909. Refund of \$112.76 on shipment of ditching machine from Caney, Kans., to Holly, Colo., on account of excessive rate.

4783. *Stoop & Green v. Atchison, Topeka & Santa Fe Railway Company.* February 26, 1909. Refund of \$44.73 on shipment of hay from Florence, Kans., to Rocky Ford, Colo., on account of excessive rate.

4802. *D. W. Alderman & Sons Company v. Atlantic Coast Line Railroad Company.* March 27, 1909. Refund of \$105.75 on 13 carloads of lumber from Alcoln, S. C., to Goldsboro, N. C., on account of excessive rate.

4803. *William J. Starr v. Chicago, St. Paul, Minneapolis & Omaha Railway Company.* March 5, 1909. Refund of \$7.28 on carload of fuel wood from Weston, Wis., to St. James, Minn., on account of excessive rate.

4807. *Edward Wittwer & Brother v. Illinois Central Railroad Company.* March 27, 1909. Refund of \$7.56 on shipment of cheese from Monticello, Wis., to Chicago, Ill., on account of excessive rate.

4815. *Horvitz Brothers v. Chicago & Eastern Illinois Railroad Company.* March 20, 1909. Refund of \$14.10 on shipment of watermelons from Campbell, Mo., to Chicago, Ill., on account of excessive rate.

4824. *General Electric Company v. New York Central & Hudson River Railroad Company et al.* March 20, 1909. Refund of \$249.64 on 5 shipments of machinery from Schenectady, N. Y., to Fall River, Mass., on account of excessive rate.

4831. *I. N. Chase v. Boston & Maine Railroad et al.* March 13, 1909. Refund of \$16.38 on carload of lath from Conway, N. H., to Natick, Mass., on account of excessive rate.

4843. *Summit Lumber Company v. Chicago, Rock Island & Pacific Railway Company.* March 12, 1909. Refund of \$18.95 on car of lumber from Randolph, La., to Giroux City, Iowa, on account of misrouting.

4854. *Gileson Fruit Company v. Chicago, Rock Island & Pacific Railway Company et al.* March 17, 1909. Refund of \$341.10 on 5 shipments of peaches from Magazine, Blue Mountain, and Booneville, Ark., to Chicago, Ill., on account of excessive rate.

4861. *B. Voigt v. Atchison, Topeka & Santa Fe Railway Company et al.* March 31, 1909. Refund of \$369.22 on 5 carloads flint pebbles from Texas City, Tex., to Independence, Kans., on account of excessive rate.

4880. *C. H. Young Company v. Chicago, St. Paul, Minneapolis & Omaha Railway Company et al.* March 31, 1909. Refund of \$11.12 on shipment of stone from Bedford, Ind., to St. Paul, Minn., on account of excessive rate.

4887. *Pearl River Lumber Company v. Illinois Central Railroad Company.* March 24, 1909. Refund of \$22.91 on 2 carloads lumber from Brookhaven, Miss., to Nashville, Tenn., on account of misrouting.

4906. *Sparr Fruit Company v. Southern Pacific Company.* March 26, 1909. Refund of \$73.80 on shipment of box stuff from Grants Pass, Oreg., to Nordhoff, Cal., on account of excessive rate.

4918. *Yuba City Milling Company v. Southern Pacific Company.* March 30, 1909. Refund of \$183.30 on 2 shipments of flour from Yuba City, Cal., to Reno, Nev., on account of excessive rate.

4930. *New England Lime Company v. New York Central & Hudson River Railroad Company et al.* March 27, 1909. Refund of \$13.31 on shipment of coal from Bloom V-24 colliery, Pennsylvania, to East Canaan, Conn., on account of excessive rate.

4936. *Bayless & Berkalew v. Southern Pacific Company.* March 30, 1909. Refund of \$68.44 on shipment of cattle from Willcox, Ariz., to Tucson, Ariz., on account of excessive rate.

4962. *E. T. Durden Sand Company v. Southern Railway Company et al.* March 31, 1909. Refund of \$114.39 on 3 shipments of sand from Saulsbury, Tenn., to Riverton, Ala., on account of excessive rate.

4970. *Central Pennsylvania Lumber Company v. Philadelphia & Reading Railway Company.* March 30, 1909. Refund of \$91.12 on 9 carloads sawdust from Williamsport, Pa., to Sayreville, South River, and Milton Siding, N. J., on account of excessive rate.

4981. *Pittsburgh-Hickson Company v. Buffalo, Rochester & Pittsburgh Railway Company.* March 31, 1909. Refund of \$17.52 on 2 shipments of iron beds from Noeline, Pa., to Buffalo, N. Y., on account of excessive rate.

5031. *Sentney Wholesale Grocery Company v. Missouri Pacific Railway Company.* March 24, 1909. Refund of \$53.62 on carload of canned goods from Columbus, Ky., to Hutchinson, Kans., on account of excessive rate.

5033. *Woodruff Kroy Company v. St. Louis, Iron Mountain & Southern Railway Company.* March 24, 1909. Refund of \$13.42 on carload of heading from Cary, Mo., to Davenport, Iowa, on account of misrouting.

5119. *Wheeler-Holden Company v. Louisville & Nashville Railroad Company.* March 29, 1909. Refund of \$90.90 on 3 carloads cross-ties from Myers, Ky., to Buffalo, N. Y., on account of excessive rate.

5173. *George Ehrat & Company v. Illinois Central Railroad Company*. March 19, 1909. Refund of \$27.78 on shipments of cheese from Blanchardville, Monroe, and Belleville, Wis., to Chicago, Ill., on account of excessive rate.

5195. *United States Leather Company v. Chicago, Rock Island & Pacific Railway Company et al.* March 31, 1909. Refund of \$46.11 on 10 carloads hides from North Fort Worth, Tex., to Marlinton, W. Va., on account of excessive rate.

587. *Waller, Young & Company v. Louisville & Nashville Railroad Company et al.* June 14, 1909. Refund of \$108.52 on shipment of wheat from Morgansfield, Ky., to Atlanta, Ga., on account of excessive rate.

650. *Edward Hines Lumber Company v. Chicago & Northwestern Railway Company*. June 11, 1909. Refund of \$436 on shipments of lumber from Iron River, Wis., to Chicago, Ill., on account of excessive rate.

705. *Union Roofing Company v. Chicago, St. Paul, Minneapolis & Omaha Railway Company*. June 11, 1909. Refund of \$12.20, and collection waived of \$12.20, on shipment of building paper from Elkhart, Ind., to St. Paul, Minn., on account of excessive rate.

754. *The Heisler Company v. Toledo & Ohio Central Railroad Company*. June 4, 1909. Refund of \$160.73 on shipment of pumping machinery from St. Marys, Ohio, to Waukegan, Ill., on account of excessive rate.

790. *Sanford Richards v. Chicago, Burlington & Quincy Railroad Company*. May 22, 1909. Refund of \$62.17 on shipment of grain from Orleans, Nebr., to Kansas City, Mo., on account of excessive rate.

893. *Massillon Iron & Steel Company v. Pennsylvania Company*. June 18, 1909. Refund of \$319.83 on shipments of iron pipe from Newcomerstown and Massillon, Ohio, to various points, on account of excessive rate.

932. *Missoula Mercantile Company v. Northern Pacific Railway Company*. April 9, 1909. Refund of \$30.99 on carload of sugar from San Francisco, Cal., to Taft, Mont., on account of excessive rate and canceling previous order.

977. *G. Heileman Brewing Company v. Chicago, Burlington & Quincy Railroad Company*. May 17, 1909. Refund of \$3.14 on shipments of beer from La Crosse, Wis., to Moorhead, Minn., on account of excessive rate.

1011. *Southern Texas Truck Growers Association v. Gulf, Colorado & Santa Fe Railway Company*. May 29, 1909. Refund of \$61 on shipments of vegetables from points in Texas to various points, on account of excessive reconsigning charges.

1107. *J. B. Simmons & Company v. Central Railroad Company of New Jersey*. June 12, 1909. Refund of \$64 on various shipments of vegetables, on account of excessive track storage charges.

1133. *Van Wickle & Metzger v. Chicago & North Western Railway Company*. May 4, 1909. Collection waived of \$363.28 on shipments of chop feed and meal from York, Nebr., to Deadwood, S. Dak., on account of excessive rate.

1140. *Sumter Lumber Company v. Alabama Great Southern Railroad Company*. June 18, 1909. Refund of \$6.18 on carload of laths from Hixon, Ala., to Ferdinand, Ind., on account of misrouting.

1233. *F. S. Harmon & Company v. Northern Pacific Railway Company*. April 21, 1909. Refund of \$176.28 on 2 carloads of furniture from Chehalis, Wash., to Portland, Oreg., on account of excessive rate.

1238. *Sheridan Coal Company v. Chicago, Burlington & Quincy Railroad Company and Northern Pacific Railway Company*. June 18, 1909. Refund of \$20.02 on carload of coal from Dietz, Wyo., to Spokane, Wash., on account of excessive rate.

1251. *R. W. Prosser v. Galveston, Harrisburg & San Antonio Railway Company et al.* May 12, 1909. Refund of \$817.47 on 35 carloads of cattle from Comstock, Tex., to Kaw, Okla., on account of excessive rate.

1273. *Giant Powder Company, Consolidated, v. Southern Pacific Company*. June 17, 1909. Refund of \$13.53 on carload of dynamite from Giant, Cal., to Silver City, N. Mex., on account of misrouting.

1316. *Consolidated Coal Company v. Southern Pacific Company et al.* May 14, 1909. Refund of \$394.60 on 8 carloads of coal from Keyser, W. Va., to San Francisco, Cal., on account of excessive rate.

1356. *Plunkett, Jarrell Grocer Company v. Wisconsin Central Railway Company*. April 20, 1909. Refund of \$108.17 on shipment of potatoes from Plainfield, Wis., to Pocahontas, Ark., on account of excessive rate.

1362. *Germain & Boyd Lumber Company v. Louisiana Railway & Navigation Company*. May 3, 1909. Refund of \$71.49 on carload of lumber from Atlanta, La., to Toledo, Ohio, on account of error in billing.

1480. *American Sheet & Tin Plate Company v. Pittsburg & Lake Erie Railroad Company et al.* June 11, 1909. Refund of \$28.17 on shipments of black plate from Demmler, Pa., to Oshawa, Ontario, on account of excessive rate.

1493. *American Sheet & Tin Plate Company v. Pennsylvania Company*. May 22, 1909. Refund of \$0.98 on shipments of plate steel from Canal Dover, Ohio, to Buffalo, N. Y., on account of excessive rate.

1510. *American Sheet & Tin Plate Company v. Pennsylvania Company*. May 29, 1909. Refund of \$1.19 on shipment of tin plate from New Castle, Pa., to Quincy, Ill., on account of excessive rate.

1516. *American Sheet & Tin Plate Company v. Lake Erie & Western Railroad Company et al.* June 1, 1909. Refund of \$36.72 on shipment of black plate from Elwood, Ind., to Sheboygan, Wis., on account of excessive rate.

1567. *American Linseed Company v. Chicago, Burlington & Quincy Railroad Company*. May 19, 1909. Refund of \$139.50 on 6 carloads of oil meal from Sioux City, Iowa, to various points in Nebraska, on account of excessive rate.

1574. *Penick & Ford v. Galveston, Harrisburg & San Antonio Railway Company et al.* April 8, 1909. Refund of \$399.46 on 4 carloads of sugar and molasses from Wharton, Tex., to Shreveport, La., on account of excessive rate.

1590. *Chase & Company v. Southern Railway Company et al.* May 17, 1909. Refund of \$6.98 on carload of celery from Sanford, Fla., to Pittsburg, Pa., on account of excessive rate.

1629. *Hirsch Brothers v. Texas & New Orleans Railroad Company et al.* May 25, 1909. Refund of \$3.79 on shipment of candy from Chicago, Ill., to Houston, Tex., on account of excessive rate.

1713. *Standard Fuel Supply Company v. Atlantic Coast Line Railroad Company et al.* April 3, 1909. Refund of \$151.79 on 6 carloads of coal from Durham, Ga., to Lake Mary, Fla., on account of excessive rate.

1722. *White Lake Lumber Company v. Chicago & North Western Railway Company*. May 19, 1909. Refund of \$26.14 on 9 carloads of lumber from Rainy River and Beaudette, Minn., to Chicago, Ill., on account of excessive rate.

1770. *H. J. Heinz Company v. Illinois Central Railroad Company et al.* May 19, 1909. Refund of \$25.08 on shipment of pickles from Allegheny, Pa., to Nashville, Tenn., on account of excessive rate.

1793. *J. I. Lamb Company v. Chicago, Burlington & Quincy Railroad Company et al.* May 10, 1909. Refund of \$20.66 on shipment of oysters from Cambridge, Md., to La Crosse, Wis., on account of excessive rate.

1796. *Crane Company v. Chicago & North Western Railway Company et al.* June 1, 1909. Refund of \$69.35 on 2 carloads of iron pipe, etc., from Chicago, Ill., to Calumet, Mich., on account of excessive rate.

1858. *In the matter of relief of agent of Southern Kansas Railway Company of Texas, at Panhandle, Tex.* April 22, 1909. Collection waived of \$43.20 on shipment of hay from Roswell, N. Mex., to Panhandle, Tex., on account of excessive rate.

1912. *De Camp Brothers and Yule Iron, Coal & Coke Company v. St. Louis & San Francisco Railroad Company*. May 29, 1909. Refund of \$207.75 on carload of pig iron from Trussville, Ala., to Thurber Junction, Tex., on account of misrouting.

1925. *Magill Lumber Company v. Chicago, Rock Island & Pacific Railway Company*. April 26, 1909. Refund of \$22.82 on carload of lumber from Perkins, Ark., to Stark, Ark., on account of misrouting.

1931. *J. W. Sefton Manufacturing Company v. Michigan Central Railroad Company et al.* April 26, 1909. Refund of \$38.22 on 2 carloads of paper boxes from Chicago, Ill., to Philadelphia, Pa., on account of excessive rate.

1949. *Pacific Hardware & Steel Company v. Atchison, Topeka & Santa Fe Railway Company et al.* May 22, 1909. Refund of \$118.33 on shipment of blacksmiths' forges and parts from Lancaster, Pa., to San Francisco, Cal., on account of excessive rate.

1971. *McCaull-Webster Elevator Company v. Great Northern Railway Company*. June 1, 1909. Refund of \$80.57 on various shipments of lumber from various points to Winnebago, Nebr., on account of excessive rate.

1972. *Root Glass Company v. Vandalia Railroad Company et al.* June 10, 1909. Refund of \$13.64 on shipment of bottles from Terre Haute, Ind., to Deerfield, Ohio, on account of excessive rate.

1978. *Illinois Box Company v. Chicago, Rock Island & Pacific Railway Company.* April 12, 1909. Refund of \$16.86 on 2 carloads of lumber from Madison, Ark., to Alton, Ill., on account of misrouting.

2012. *Anchor Coal Company v. Chicago, Rock Island & Pacific Railway Company.* April 3, 1909. Refund of \$29.48 on carload of coal from Centerville, Iowa, to Fairfax, S. Dak., on account of misrouting.

2042. *Paola Refining Company v. Missouri, Kansas & Texas Railway Company.* April 21, 1909. Refund of \$7.41 on 65 barrels of oil from Paola, Kans., to Boonville, Mo., on account of excessive rate.

2073. *Fort Defiance Coal & Coke Company v. Chesapeake & Ohio Railway Company et al.* June 4, 1909. Refund of \$518.06 on 108 carloads of coal from mines near Old Ganley, W. Va., to Jacksonville, Fla., on account of excessive rate.

2084. *Sulphur Lumber & Timber Company v. Chicago, Rock Island & Pacific Railway Company.* April 22, 1909. Refund of \$7.55 on carload of lumber from Winnfield, La., to Carrolton, Ill., on account of misrouting.

2086. *C. Hoffman & Son v. Chicago, Rock Island & Pacific Railway Company.* April 20, 1909. Refund of \$11.99 on carload of flour from Woodbine, Kans., to Doniphan, Mo., on account of misrouting.

2100. *Southwestern Rice Company v. Houston & Texas Central Railroad Company et al.* May 25, 1909. Refund of \$181.98 on shipment of rice from Houston, Tex., to Santa Fe, N. Mex., on account of excessive rate.

2117. *Lippincott Glass Company v. Wabash Railroad Company et al.* June 11, 1909. Refund of \$3.30 on carload of glass chimneys from Alexandria, Ind., to Toledo, Ohio, on account of excessive rate.

2124. *Lafayette Engineering Company v. Chicago, Indianapolis & Louisville Railroad Company et al.* April 22, 1909. Refund of \$68.86 on 2 carloads of bridge material from Lafayette, Ind., to Beloit, Wis., on account of excessive rate.

2152. *James Gibson, jr., v. The Pennsylvania Railroad Company et al.* June 28, 1909. Refund of \$722.97 on shipments of timber from Strattonville, Pa., to Levis, Quebec, on account of excessive rate.

2209. *Copper Queen Consolidated Mining Company v. El Paso & Southwestern System et al.* May 29, 1909. Refund of \$108.50 on shipment of iron beds from Kenosha, Wis., to Douglas, Ariz., on account of excessive rate.

2218. *Al Knowles v. El Paso & Southwestern System et al.* June 5, 1909. Refund of \$144.70 on 1 auto runabout from Detroit, Mich., to Douglas, Ariz., on account of excessive rate.

2223. *Edgar Lumber Company v. Chicago, Rock Island & Pacific Railway Company.* April 9, 1909. Refund of \$7.71 on carload of lumber from Cornie, Ark., to Evansville, Ind., on account of misrouting.

2226. *Kelley, Maus & Company v. Chicago & Eastern Illinois Railroad Company.* June 26, 1909. Refund of \$31.39 on shipment of bar iron from Terre Haute, Ind., to Pella, Iowa, on account of misrouting.

2234. *Pennsylvania Fireproofing Company v. Pittsburg, Shawmut & Northern Railroad Company et al.* April 17, 1909. Refund of \$109.70 on 5 carloads of brick from Kaulmont, Pa., to Wellsville, N. Y., on account of excessive rate.

2275. *T. E. Irwin & Bro. v. Chicago, Rock Island & Pacific Railway Company.* May 26, 1909. Refund of \$6.12 on carload of lumber from Bernice, La., to Patoka, Ill., on account of misrouting.

2294. *J. G. Leavell & Company v. Chicago Great Western Railway Company et al.* April 12, 1909. Refund of \$66.14 on shipment of molasses from Lake Side, Tex., to St. Paul, Minn., on account of excessive weight.

2354. *Marblehead Lime Company v. Chicago, Burlington & Quincy Railroad Company.* May 28, 1909. Refund of \$68 on carload of lime from Springfield, Mo., to Sheridan, Wyo., on account of excessive rate.

2369. *Edgar Lumber Company v. Chicago, Rock Island & Pacific Railway Company.* May 5, 1909. Refund of \$6.15 on carload of lumber from Cornie, Ark., to Peoria, Ill., on account of misrouting.

2399. *Sunderland Brothers Company v. Chicago, Burlington & Quincy Railroad Company et al.* April 21, 1909. Refund of \$19.18 on 5 carloads of coal from Sheboygan, Wis., to Aurora, etc., Nebr., on account of excessive rate.

2440. *Butte Wholesale Grocery Company v. Northern Pacific Railway Company.* June 4, 1909. Refund of \$111.90 on shipment of evaporated apples from Williamson, N. Y., to Butte, Mont., on account of excessive rate.

2452. *Chas. H. Smith Estate v. New York, Ontario & Western Railway Company et al.* May 25, 1909. Refund of \$101.26 on shipment of lumber from Margaretville, N. Y., to New York City, on account of excessive rate.

2458. *W. W. Stokes Estate v. Illinois Central Railroad Company.* June 8, 1909. Refund of \$15.95 on shipment of coal from Lilly, Pa., to Anna, Ill., on account of excessive rate.

2492. *Oral Wood Dish Company v. Chicago & North Western Railway Company et al.* June 5, 1909. Refund of \$10.76 on shipments of wood dishes from Traverse City, Mich., to St. Paul, Minn., on account of excessive rate.

2524. *Wittenberg Warehouse & Transfer Company v. Atchison, Topeka & Santa Fe Railway Company et al.* May 11, 1909. Refund of \$113.47 on carload of beer from St. Louis, Mo., to Tonopah, Nev., on account of excessive weight.

2531. *Nicholson File Company v. Cleveland, Cincinnati, Chicago & St. Louis Railway Company.* May 15, 1909. Refund of \$1.80 on shipment of files from Anderson, Ind., to Johnsonburg, Pa., on account of misrouting.

2543. *Goff-Kirby Coal Company v. Cleveland, Cincinnati, Chicago & St. Louis Railway Company.* April 21, 1909. Refund of \$15.75 on carload of feed from Indianapolis, Ind., to Chardon, Ohio, on account of misrouting.

2551. *Bimel Buggy Company v. Cleveland, Cincinnati, Chicago & St. Louis Railway Company.* May 12, 1909. Refund of \$3.25 on 1 surrey from Sidney, Ohio, to Booneville, Ind., on account of misrouting.

2557. *American Tobacco Company v. Cleveland, Cincinnati, Chicago & St. Louis Railway Company.* June 15, 1909. Refund of \$1.20 on shipment of tobacco from Louisville, Ky., to Springfield, Ill., on account of misrouting.

2560. *American Tobacco Company v. Cleveland, Cincinnati, Chicago & St. Louis Railway Company.* June 4, 1909. Refund of \$3.07 on shipment of tobacco from Louisville, Ky., to Bangor, Me., on account of misrouting.

2565. *Anglo American Copper Company v. Southern Pacific Company.* April 22, 1909. Refund of \$1,330.64 on 8 carloads of crude oil from Oil City, Cal., to Kelvin, Ariz., on account of excessive rate.

2592. *E. N. Bezenberger v. Wabash Railroad Company.* April 14, 1909. Refund of \$35.77 on shipment of coal from Chicago, Ill., to Bloomfield, Iowa, on account of excessive rate.

2594. *W. W. Wheeler Lumber & Bridge Supply Company v. Wabash Railroad Company.* June 22, 1909. Refund of \$23.68 on shipment of coal from the East to Des Moines, Iowa, on account of excessive rate.

2598. *C. F. McGee v. Cleveland, Cincinnati, Chicago & St. Louis Railway Company.* April 20, 1909. Refund of \$23.14 on carload of lumber from Allens Creek, Tenn., to Richmond, Ind., on account of misrouting.

2601. *Louisville & Nashville Railroad Company v. Cleveland, Cincinnati, Chicago & St. Louis Railway Company.* April 8, 1909. Refund of \$2 to W. E. Hearst and \$14 to Louisville & Nashville Railroad Company on carload of corn meal from Peoria, Ill., to Latonia, Ky., on account of misrouting.

2604. *Du Pont Powder Company v. Cleveland, Cincinnati, Chicago & St. Louis Railway Company.* June 5, 1909. Refund of \$7.70 on shipment of powder from Fontanet, Ind., to Drakesboro, Ky., on account of misrouting.

2605. *Patterson-Sargent Company v. Cleveland, Cincinnati, Chicago & St. Louis Railway Company.* June 21, 1909. Refund of \$3.28 on shipment of paint from Cleveland, Ohio, to St. Louis, Mo., on account of misrouting.

2646. *S. Weber & Sons v. Louisville & Nashville Railroad Company.* May 15, 1909. Refund of \$22.74 on carload of scrap iron from Louisville, Ky., to South Bend, Ind., on account of misrouting.

2689. *Bain Peanut Company v. Atlantic Coast Line Railroad Company.* May 5, 1909. Refund of \$200.18 on 17 shipments of peanuts from Williamston, N. C., to Suffolk, Va., on account of excessive rate.

2690. *Bain Peanut Company v. Atlantic Coast Line Railroad Company*. April 3, 1909. Refund of \$21.24 on 1 shipment of peanuts from Jamesville, N. C., to Suffolk, Va., on account of excessive rate.

2694. *Gallaway Flour Mill & Elevator Company v. Chicago & North Western Railway Company*. April 13, 1909. Refund of \$72.51 on shipment of grain from Oakdale, Nebr., to Casper, Wyo., on account of excessive rate.

2706. *Laclede-Christy Clay Products Company v. Southern Pacific Company*. May 27, 1909. Refund of \$93.33 on 8 carloads of fire brick from St. Louis, Mo., to Oxnard, Cal., on account of excessive rate.

2733. *Howe Grain & Mercantile Company v. Missouri, Kansas & Texas Railway Company*. May 22, 1909. Refund of \$49.01 on carload of snapped corn from Chouteau, Ind. T., to La Fayette, La., on account of misrouting.

2769. *Lesser-Goldman Cotton Company v. St. Louis, Iron Mountain & Southern Railway Company*. June 4, 1909. Refund of \$5.25 on 50 bales of cotton from Little Rock, Ark., to Fall River, Mass., on account of misrouting.

2776. *Randolph Lumber Company v. Southern Railway Company*. April 17, 1909. Refund of \$8.70 on carload of lumber from Jennings, Va., to Rochester, N. Y., on account of excessive rate.

2807. *J. B. Malcolm & Company v. The Pennsylvania Railroad Company et al.* April 19, 1909. Refund of \$9 on shipment of canned and dried apples from Marion, N. Y., to St. Paul, Minn., on account of excessive rate.

2809. *J. B. Malcolm & Company v. Pennsylvania Railroad Company*. April 19, 1909. Refund of \$9.45 on shipment of canned apples from Marion, N. Y., to St. Paul, Minn., on account of excessive rate.

2810. *Winston, Harper, Fisher Company v. Pennsylvania Railroad Company et al.* June 11, 1909. Refund of \$16.71 on shipment of apples from Marion, N. Y., to Minneapolis, Minn., on account of excessive rate.

2817. *Minnequa Lumber Company v. Colorado Springs & Cripple Creek District Railway Company*. April 17, 1909. Refund of \$130.92 on 3 carloads of lumber from Cimarron, N. Mex., to Cripple Creek, Colo., on account of excessive rate.

2819. *J. B. Malcolm & Company v. Pennsylvania Railroad Company et al.* April 22, 1909. Refund of \$10.80 on shipment of canned apples from Marion, N. Y., to St. Paul, Minn., on account of excessive rate.

2831. *W. W. Tibbals & Company v. Chesapeake & Ohio Railway Company*. April 5, 1909. Refund of \$27.28 on carload of ties from St. Paul, Ky., to Hebron, Ohio, on account of misrouting.

2843. *Parlin & Orendorff Implement Company and Maroney Hardware Company v. Chicago, Rock Island & Pacific Railway Company et al.* June 25, 1909. Refund of \$66 on 2 carloads of wagon bows from Opitz, Ark., to Dallas, Tex., on account of excessive rate.

2854. *W. W. Tackaberry v. St. Louis & San Francisco Railroad Company*. April 24, 1909. Refund of \$15 on shipment of hoops from Pocahontas, Ark., to Gaffney, S. C., on account of misrouting.

2856. *J. D. Hollingshead Company v. Yazoo & Mississippi Valley Railroad Company et al.* May 18, 1909. Refund of \$28.67 on 3 carloads of circled heading from Clarkdale, Miss., to Savannah, Ga., on account of excessive rate.

2869. *California Fruit Growers Exchange v. Oregon Short Line Railway Company*. June 10, 1909. Refund of \$196.72 on shipment of oranges from Casa Blanca, Cal., to Pocatello, Idaho, on account of excessive rate.

2876. *Charleston Mining & Manufacturing Company v. Atlantic Coast Line Railroad Company*. April 15, 1909. Refund of \$348.19 on 109 carloads of phosphate rock from Johns Island, S. C., to Wilmington, N. C., on account of excessive rate.

2906. *J. E. McGuire v. Morgan's Louisiana & Texas Railroad & Steamship Company et al.* April 1, 1909. Refund of \$277.14 on carload of second-hand sugar machinery from Franklin, La., to Denton, Tex., on account of excessive rate.

2915. *W. R. Rankin v. St. Louis, Iron Mountain & Southern Railway Company*. April 7, 1909. Refund of \$13.50 on carload of lumber from Charleston, Mo., to Winona, Minn., on account of misrouting.

2949. *Ritter Lumber Company v. Norfolk & Western Railway Company*. April 26, 1909. Refund of \$2.20 on carload of lumber from Ritter, W. Va., to Oxford, Ohio, on account of excessive rate.

2967. *Collin County Mill & Elevator Company v. Missouri, Kansas & Texas Railway Company of Texas.* May 10, 1909. Collection waived of \$12.09 on shipment of flour, bran, and chops from McKinney, Tex., to Point, Tex., on account of excessive rate.

3045. *Hobson Brothers v. Southern Pacific Company et al.* May 17, 1909. Collection waived of \$3,995.78 on 23 carloads of cattle from Hereford, Ariz., to Ventura, Cal., on account of excessive rate.

3088. *Struby-Estabrook Mercantile Company v. Durham & Southern Railway Company et al.* May 3, 1909. Collection waived of \$177.24 on 2 shipments of tobacco from Durham, N. C., to Denver, Colo., on account of excessive rate.

3095. *Golden Eagle Milling Company v. Southern Pacific Company.* June 28, 1909. Refund of \$189.07 on 9 carloads of poultry food and corn from various points to Petaluma, Cal., on account of misrouting.

3106. *Riddle-Rehbein Manufacturing Company v. Illinois Central Railroad Company.* May 25, 1909. Refund of \$22 on 11 carloads of lumber from Natchez, Miss., to St. Louis, Mo., on account of excessive switching charges.

3108. *G. Mathes' Sons Rag Company v. Illinois Central Railroad Company.* May 19, 1909. Refund of \$4 on carload of scrap iron from Laurel, Miss., to St. Louis, Mo., on account of excessive switching charges.

3109. *American Milling Company v. Illinois Central Railroad Company.* May 25, 1909. Refund of \$76.13 on shipments of grain screenings from Superior, Wis., to Owensboro, Ky., on account of misrouting.

3113. *J. F. Scobee Lumber Company v. Illinois Central Railroad Company.* May 10, 1909. Refund of \$2 on carload of lumber from Helena, Ark., to St. Louis, Mo., on account of excessive switching charges.

3130. *Davis & Shaw Furniture Company v. Denver & Rio Grande Railroad Company et al.* March 25, 1909. Refund of \$14.76 on carload of furniture from Fort Smith, Ark., to Denver, Colo., on account of excessive minimum weight.

3131. *Chicago & Alton Railway Company v. Illinois Central Railroad Company.* June 21, 1909. Refund of \$2.14 on shipment of glucose from Venice, Ill., to New Orleans, La., on account of excessive switching charges.

3132. *Universal Portland Cement Company v. Illinois Central Railroad Company.* April 26, 1909. Refund of \$55.29 on 7 carloads of cement from Buffington, Ind., to St. Louis, Mo., on account of excessive switching charges.

3138. *Chicago, Burlington & Quincy Railroad Company v. Illinois Central Railroad Company.* April 8, 1909. Refund of \$1 on carload of corn from St. Louis, Mo., to Nashville, Tenn., on account of excessive switching charge.

3155. *Ady & Crowe Mercantile Company v. Colorado & Southern Railway Company et al.* June 14, 1909. Refund of \$126.25 on 7 carloads of hay from Johnstown, etc., Colo., to Shreveport, La., on account of excessive rate.

3162. *Interior Elevator Company v. Chicago, Milwaukee & St. Paul Railway Company.* May 7, 1909. Refund of \$370.50 on 289 carloads of grain, on account of excessive switching charges at Minneapolis, Minn.

3168. *Paepcke-Leicht Lumber Company v. Chicago, Milwaukee & St. Paul Railway Company.* April 6, 1909. Refund of \$15 on 3 carloads of lumber from Merrill, Wis., to Chicago, Ill., on account of excessive switching charges.

3188. *Virginia-Carolina Chemical Company v. St. Louis, Iron Mountain & Southern Railway Company.* May 14, 1909. Refund of \$384 on 3 carloads of acid phosphate from Charleston, S. C., to Shreveport, La., on account of excessive rate.

3213. *Summers-Parrott Hardware Company v. Pennsylvania Company et al.* June 16, 1909. Refund of \$5.71 on shipment of bolts from Newcastle, Pa., to Johnson City, Tenn., on account of misrouting.

3217. *Benjamin Iron & Steel Company v. Lehigh Valley Railroad Company.* April 21, 1909. Refund of \$13.40 on shipment of scrap iron from Wilkes-Barre, Pa., to Elmira, N. Y., on account of excessive rate.

3219. *Adolph Coors v. Colorado & Southern Railway Company.* June 7, 1909. Refund of \$160 on carload of brewers' rice from Galveston, Tex., to Denver, Colo., on account of excessive rate.

3226. *Hughes & Company et al. v. Great Northern Railway Company.* June 1, 1909. Collection waived of \$60 on 9 carloads of lime from Duluth, Minn., to Brandon, Manitoba, on account of excessive rate.

3243. *Calhoun Mills v. Seaboard Air Line Railway et al.* April 20, 1909. Refund of \$664.86 on 24 carloads of machinery from Hopedale, Mass., to Calhoun Falls, S. C., on account of excessive rate.

3244. *James B. Clow & Sons v. Chicago & North Western Railway Company.* April 14, 1909. Refund of \$38.40 on carload of iron pipe from Chicago, Ill., to Pierre, S. Dak., on account of excessive rate.

3261. *Central Iron & Steel Company v. Pennsylvania Railroad Company.* May 26, 1909. Refund of \$23.32 on shipment of steel plates from Harrisburg, Pa., to Marinette, Wis., on account of misrouting.

3274. *Keever Starch Company v. Norfolk & Western Railway Company et al.* April 19, 1909. Refund of \$19.60 on 1 carload of starch from Columbus, Ohio, to Caroleen, N. C., on account of excessive rate.

3299. *West, Flynn & Harris Company v. Central of Georgia Railway Company.* April 3, 1909. Refund of \$9.89 on shipment of hay and oats from Cairo, Ill., to Savannah, Ga., on account of misrouting.

3303. *Oval Wood Dish Company v. Pere Marquette Railroad Company et al.* April 20, 1909. Refund of \$8.62 on carload of oval wood dishes from Traverse City, Mich., to Burlington, Iowa, on account of excessive rate.

3306. *Federal Lead Company v. Chicago, Burlington & Quincy Railroad Company.* April 14, 1909. Refund of \$13.72 on carload of structural steel from Minneapolis, Minn., to Flat River, Mo., on account of misrouting.

3316. *Gamble-Robinson Conin Company v. Chicago, St. Paul, Minneapolis & Omaha Railway Company et al.* June 3, 1909. Refund of \$18.13 on carload of apples from Aullville, Mo., to Mankato, Minn., on account of excessive rate.

3323. *Gulf Lumber Company v. Gulf, Colorado & Santa Fe Railway Company et al.* April 26, 1909. Refund of \$121.46 on 10 carloads of iron from Chicago, Ill., to Cravens, La., on account of excessive rate.

3347. *Southern Railway Company v. Southern Pacific Company.* June 11, 1909. Refund of \$188.21 on carload of beans from Santa Paula, Cal., to Richmond, Va., on account of misrouting.

3349. *P. Kuntz v. Houston, East & West Texas Railway Company.* May 12, 1909. Refund of \$144.75 on 6 carloads of lumber from Stanley, Tex., to Thebes, Ill., on account of misrouting.

3360. *Dallas Buggy & Wagon Company v. Illinois Central Railroad Company.* April 13, 1909. Refund of \$15.22 on shipment of road carts from Indianapolis, Ind., to Dallas, Tex., on account of misrouting.

3368. *Fuller & Fuller Company v. Western Transit Company et al.* May 19, 1909. Refund of \$26.11 on carload of Paris green from New York, N. Y., to Chicago, Ill., on account of excessive rate.

3371. *American Hide & Leather Company v. Toledo & Ohio Central Railway Company et al.* May 25, 1909. Refund of \$62.66 on shipment of hides from Columbus, Ohio, to Sheboygan, Wis., on account of excessive rate.

3373. *Pierce Milling Company v. Chicago & North Western Railway Company.* April 21, 1909. Refund of \$100.52 on shipment of flour, feed, etc., from Pierce, Nebr., to Casper, Wyo., on account of excessive rate.

3379. *G. R. Payne v. St. Louis Southwestern Railway Company et al.* May 19, 1909. Refund of \$44.20 on shipment of sewer pipe from Whitehall, Ill., to Taylor, Tex., on account of excessive rate.

3384. *W. A. McKinney and R. E. Watkins v. American Express Company.* April 8, 1909. Refund of \$50 on carload of horses from New York, N. Y., to Windsor, Ontario, on account of excessive rate.

3387. *Pendergast Lumber Company v. Texas & New Orleans Railroad Company.* May 12, 1909. Refund of \$16.36 on carload of lumber from Warren, Tex., to St. Louis, Mo., on account of misrouting.

3388. *William Cameron & Company v. Texas & New Orleans Railroad Company.* April 7, 1909. Refund of \$22.12 on carload of lumber from Rockland, Tex., to Milwaukee, Wis., on account of misrouting.

3390. *American Beet Sugar Company v. Atchison, Topeka & Santa Fe Railway Company.* May 11, 1909. Refund of \$154.24 on carload of sugar and sirup from Oxnard, Cal., to Prescott, Ariz., on account of excessive rate.

3399. *Pennsylvania Railroad Company v. Carolina, Clinchfield & Ohio Railway Company*. April 27, 1909. Refund of \$22.32 on carload of lumber from Loves, Tenn., to Philadelphia, Pa., on account of misrouting.

3406. *Harvard Milling & Power Company v. Chicago & North Western Railway Company*. May 17, 1909. Refund of \$32.90 on carload of flour from Harvard, Nebr., to Gregory, S. Dak., on account of excessive rate.

3410. *W. S. Milne v. Southern Railway Company et al.* May 27, 1909. Refund of \$140.45 on carload of chair stock from Stevenson, Ala., to Cleveland, Tenn., on account of excessive rate.

3461. *E. R. Dalbey & Company v. Atchison, Topeka & Santa Fe Railway Company*. May 8, 1909. Refund of \$638.73 on 10 carloads of guano from Barreal, Mexico, and El Paso, Tex., to San Francisco and Berkeley, Cal., on account of excessive rate.

3464. *G. H. Barnes Hardwood Lumber Company v. St. Louis Southwestern Railway Company*. May 15, 1909. Refund of \$24.67 on carload of lumber from Halliday, Ark., to St. Cloud, Minn., on account of misrouting.

3467. *Raeform Power & Manufacturing Company v. Aberdeen & Rockfish Railroad Company*. April 24, 1909. Refund of \$140.07 on shipments of cotton yarn from Raeform, N. C., to Greenwich, N. Y., on account of excessive rate.

3501. *Beekman Lumber Company v. Illinois Central Railroad Company*. May 19, 1909. Refund of \$2.28 on shipment of lumber from Brilliant, Ala., to Thebes, Ill., to Clinton, Iowa, on account of excessive rate. (Reconsigned.)

3503. *Warner-Newton Lumber Company v. New York, Auburn & Lansing Railroad Company*. May 5, 1909. Refund of \$9.32 on carload of posts from May Lake, Mich., to Genoa, N. Y., on account of excessive rate.

3522. *Minneapolis Cedar & Lumber Company v. Chicago, Burlington & Quincy Railroad Company et al.* June 4, 1909. Refund of \$1.28 on carload of lumber from Kelliher, Minn., to Emerson, Iowa, on account of excessive rate.

3524. *W. M. Ritter Lumber Company v. Chesapeake & Ohio Railway Company et al.* June 4, 1909. Refund of \$21.60 on shipment of lumber from Raleigh, W. Va., to Clarksville, Ohio, on account of excessive rate.

3549. *E. R. Godfrey & Sons Company v. Mineral Range Railroad Company et al.* May 12, 1909. Refund of \$102.22 on 8 carloads of vegetables from St. Paul, Minn., to Hancock, Mich., on account of excessive rate.

3555. *Longville Long Leaf Lumber Company v. Gulf, Colorado & Santa Fe Railway Company et al.* June 19, 1909. Refund of \$583.28 on 4 carloads of sand from Fletcher, Tex., to Longville, La., on account of excessive rate.

3570. *Fort Defiance Coal & Coke Company v. Chesapeake & Ohio Railway Company*. May 14, 1909. Refund of \$71.19 on 18 carloads of coal from Old Ganley, W. Va., to Newport News, Va., on account of excessive rate.

3573. *L. Burg Carriage Company v. Atchison, Topeka & Santa Fe Railway Company*. June 18, 1909. Refund of \$2.14 on shipment of buggies from Carrolton, Mo., to Scranton, Kans., on account of excessive rate.

3575. *Relief of Agents of Las Vegas & Tonopah Railroad Company et al.* May 20, 1909. Collection waived of \$2,587.24 on 15 shipments of live stock and hay from points in Utah to Rhyolite and Beatty, Nev., on account of excessive rate.

3578. *Swift & Company v. Chicago, Rock Island & Pacific Railway Company et al.* April 5, 1909. Refund of \$279.22 on 6 carloads of packing-house products and fresh meat from South Omaha, Nebr., to Pueblo, Colo., on account of excessive rate.

3580. *Metropolitan Paving Brick Company v. Pennsylvania Company*. May 28, 1909. Refund of \$421.95 on 18 carloads of paving brick from Canton, Ohio, to Shelbyville, Ind., on account of excessive rate.

3603. *H. D. Lee Mercantile Company v. Chicago, Burlington & Quincy Railroad Company et al.* April 19, 1909. Refund of \$16.80 on carload of apples from Hagerstown, Md., to Salina, Kans., on account of excessive rate.

3604. *Bemis Omaha Bag Company v. Southern Railway Company et al.* May 5, 1909. Refund of \$161.44 on 22 shipments of cotton shoddy lining from Philadelphia, Pa., to Omaha, Nebr., on account of excessive rate.

3609. *C. B. Havens & Company v. Chicago, Burlington & Quincy Railroad Company*. April 5, 1909. Refund of \$152 on carload of cement from La Salle, Ill., to Cody, Wyo., on account of excessive rate.

3618. *Scott-Logan Milling Company v. Chicago, Milwaukee & St. Paul Railway Company.* April 1, 1909. Refund of \$24.02 on carload of hay from Spencer, Iowa, to Springfield, Ill., on account of misrouting.

3622. *H. H. Brownell v. Chicago, Burlington & Quincy Railroad Company et al.* May 22, 1909. Refund of \$63.75 on 5 carloads of cattle from Allen, Nebr., to Chicago, Ill., on account of excessive rate.

3623. *Neil Jensen v. Chicago, Burlington & Quincy Railroad Company et al.* May 22, 1909. Refund of \$27.28 on 2 carloads of cattle from Allen, Nebr., to Chicago, Ill., on account of excessive rate.

3624. *New York Central & Hudson River Railroad Company v. Yazoo & Mississippi Valley Railroad Company.* May 22, 1909. Refund of \$38.92 on shipment of cotton from Jackson, Miss., to Utica, N. Y., on account of misrouting.

3627. *Summit Lumber Company v. Chicago, Rock Island & Pacific Railway Company.* June 21, 1909. Refund of \$41 on carload of lumber from Price, Ark., to Reading, Pa., on account of misrouting.

3629. *Lackawanna Steel Company v. Central Railroad Company of New Jersey et al.* June 26, 1909. Refund of \$14,717.64 on shipments of spiegeleisen from Newark, N. J., and Hazard, Pa., to Buffalo, N. Y., on account of excessive rate.

3632. *New York Central & Hudson River Railroad Company v. Yazoo & Mississippi Valley Railroad Company.* June 18, 1909. Payment of \$29.80 on carload of cotton from Jackson, Miss., to Utica, N. Y., on account of misrouting.

3650. *Crosby & Meyers v. Illinois Central Railroad Company.* May 26, 1909. Refund of \$10.89 on shipment of cheese from Dodgeville, Wis., to Chicago, Ill., on account of excessive rate.

3661. *T. W. Broussard & Company v. Texas & Pacific Railway Company.* May 3, 1909. Refund of \$265.82 on 11 carloads of logs from Natchitoches, La., to Westwego and New Orleans, La., on account of excessive rate.

3663. *George Hiss & Company v. Pennsylvania Railroad Company.* April 5, 1909. Refund of \$15.24 on shipment of canned tomatoes from Waldorf, Md., to New York, N. Y., on account of misrouting.

3679. *S. A. Foster Lumber Company v. Chicago, Burlington & Quincy Railroad Company et al.* June 18, 1909. Refund of \$76.50 on carload of lumber from Wrenco, Idaho, to Lincoln, Nebr., on account of excessive weight.

3687. *Malvern Lumber Company v. Chicago, Rock Island & Pacific Railway Company.* April 9, 1909. Refund of \$40.94 on shipment of lumber from Tustin, Ark., to Indianapolis, Ind., on account of misrouting.

3702. *Portsmouth Cotton Oil Refining Corporation v. Atlantic Coast Line Railroad Company et al.* May 4, 1909. Refund of \$21.74 on carload of cotton-seed oil from Bennettsville, S. C., to Philadelphia, Pa., on account of excessive rate.

3709. *Avery Coal & Mining Company v. Gulf & Ship Island Railroad Company et al.* June 21, 1909. Refund of \$68.24 on 4 carloads of coal from Freeburg, Ill., to Hattiesburg, Miss., on account of excessive rate.

3734. *Carnegie Steel Company v. Wabash Pittsburg Terminal Railway Company.* June 10, 1909. Refund of \$20.04 on 2 shipments of structural material from Munhall and Clariton, Pa., to Mingo Junction, Ohio, on account of excessive rate.

3745. *Mrs. A. F. Remahart v. Atlantic Coast Line Railroad Company et al.* June 2, 1909. Refund of \$43.89 on 3 shipments of pears from Savannah, Ga., to New York, N. Y., on account of excessive rate.

3760. *Eagle White Lead Company v. Pittsburg, Cincinnati, Chicago & St. Louis Railway Company et al.* June 2, 1909. Refund of \$36.80 on 3 carloads of white lead in oil from Cincinnati, Ohio, to St. Louis, Mo., on account of excessive rate.

3762. *Western Tie & Timber Company v. Chicago, Rock Island & Pacific Railway Company.* April 2, 1909. Refund of \$63.60 on 2 carloads of piling from Houton, Norfolk, Nebr., on account of misrouting.

North Fork Fruit Growers' Association v. Chicago, St. Paul, Minneapolis & North Western Railway Company. June 1, 1909. Refund of \$12 on carload of peaches from Mitchell, S. Dak., on account of excessive rate.

W. Hull Company v. Chicago & Northwestern Railway Company. June 1, 1909. Refund of \$36 on shipment of coal from Manitowoc, Wis., to Gregory, S. Dak., on account of excessive rate.

3790. *Virginia-Carolina Chemical Company v. Chattahoochee Valley Railway Company et al.* April 1, 1909. Refund of \$26.54 on 4 carloads of fertilizer from Opelika, Ala., to McCulloh and Jester, Ala., on account of excessive rate.

3809. *Carter Lumber Company v. Galveston, Harrisburg & San Antonio Railway Company et al.* June 7, 1909. Refund of \$598.40 on 13 carloads of lumber from various points to Clifton, Ariz., on account of excessive rate.

3819. *Vandalia Railroad Company v. Chicago, Burlington & Quincy Railroad Company.* May 19, 1909. Payment of \$0.72 on shipment of brooms from Davenport, Iowa, to Collinsville, Ill., on account of misrouting.

3828. *Union Lumber Company v. Southern Railway Company et al.* May 28, 1909. Collection waived of \$29.60 and refund of \$3.70 on carload of lumber from Larkinsville, Ala., to Cincinnati, Ohio, on account of excessive rate.

3848. *Midland Valley Railroad Company v. St. Louis & San Francisco Railroad Company.* June 14, 1909. Payment of \$38.58 on carload of wire and nails from Memphis, Tenn., to Haskell, Okla., on account of misrouting.

3858. *Colorado Fuel & Iron Company v. Colorado & Southern Railway Company et al.* May 18, 1909. Refund of \$77.54 on carload of bar iron from Minnequa, Colo., to Whitewood, S. Dak., on account of excessive rate.

3861. *American Steel Foundries v. Pennsylvania Company.* May 22, 1909. Refund of \$19.26 on carload of sand from Sharon, Pa., to Alliance, Ohio, on account of excessive rate.

3873. *New York, New Haven & Hartford Railroad Company v. Boston & Maine Railroad.* April 9, 1909. Payment of \$417.36 on 5 carloads of corn from Jersey City, N. J., to Boston, Mass., on account of misrouting.

3875. *Arizona Orange Association v. Maricopa & Phoenix Railroad Company et al.* April 27, 1909. Refund of \$28.35 on carload of oranges from Phoenix, Ariz., to Chicago, Ill., on account of excessive rate.

3880. *Manitou Mineral Springs Company v. Colorado & Southern Railway Company et al.* April 16, 1909. Refund of \$24.77 on carload of mineral water from Manitou, Colo., to Cheyenne, Wyo., on account of excessive rate.

3882. *Arizona Orange Association v. Maricopa & Phoenix Railroad Company et al.* April 16, 1909. Refund of \$27.65 on carload of oranges from Phoenix, Ariz., to St. Joseph, Mo., on account of excessive rate.

3899. *Relief of Agent of Illinois Central Railroad Company at East St. Louis, Ill.* May 3, 1909. Collection waived of \$45 on 35 carloads of tobacco from St. Louis, Mo., to various points, on account of excessive switching charges.

3900. *Central States Fuel Company v. Chicago, Rock Island & Pacific Railway Company.* June 11, 1909. Refund of \$26.12 on carload of coal from Benton, Ill., to Brownsdale, Minn., on account of misrouting.

3901. *Lowe & Robison v. St. Louis & San Francisco Railroad Company.* April 29, 1909. Refund of \$14.80 on carload of hay from Kansas City, Mo., to Parma, Mo., on account of excessive rate.

3904. *Central States Fuel Company v. Chicago, Rock Island & Pacific Railway Company.* April 1, 1909. Refund of \$42.53 on carload of coal from Benton, Ill., to Red Wing, Minn., on account of misrouting.

3907. *E. H. Young v. Yazoo & Mississippi Valley Railroad Company et al.* March 22, 1909. Refund of \$335.71 on 4 carloads of cotton-seed cake from Glen Allen, Miss., to Galveston, Tex., on account of excessive rate.

3912. *J. W. Jenkins Sons' Music Company v. Kansas City Southern Railway Company.* April 19, 1909. Refund of \$1.88 on 9 shipments of musical instruments between various points, on account of excessive rate.

3922. *Armour & Company v. Chicago, Burlington & Quincy Railroad Company.* April 26, 1909. Refund of \$11.30 on 3 carloads of sawdust from Kansas City, Mo., to South Omaha, Nebr., on account of excessive rate.

3929. *Patterson Transfer Company v. Illinois Central Railroad Company.* April 21, 1909. Payment of \$552.61 for drayage of cotton at Memphis, Tenn.

3930. *Patterson Transfer Company v. Yazoo & Mississippi Valley Railroad Company.* April 29, 1909. Refund of \$409.05 on drayage of cotton at Memphis, Tenn., on account of excessive rate.

3940. *W. E. Shoot & Company v. Houston East & West Texas Railway Company.* May 20, 1909. Refund of \$28.10 on carload of lumber from Nacogdoches, Tex., to Argyle Park, Ill., on account of misrouting.

3952. *Newaygo Portland Cement Company v. Pere Marquette Railroad Company et al.* June 15, 1909. Refund of \$164.16 on 3 carloads of cement from Newaygo, Mich., to Florence, Wis., on account of excessive rate.

3953. *Pacific Fruit & Produce Company v. Northern Pacific Railway Company.* April 19, 1909. Refund of \$33.85 on carload of oranges from Redland, Cal., to North Yakima, Wash., on account of excessive rate.

3971. *Relief of Agent of Chicago, Burlington & Quincy Railroad Company at Beatrice, Nebr.* June 4, 1909. Collection waived of \$135 on carload of lumber from Wrenco, Idaho, to Beatrice, Nebr., on account of excessive minimum carload weight.

3975. *Chicago, St. Paul, Minneapolis & Omaha Railway Company v. New York Central & Hudson River Railroad Company.* April 9, 1909. Refund of \$74.06 on shipment of lemons from New York, N. Y., to Minneapolis, Minn., on account of misrouting.

3976. *Herman Loeb v. Chicago, Rock Island & Pacific Railway Company et al.* June 1, 1909. Refund of \$417.73 on 2 carloads of cotton from Ruston, La., to East St. Louis, Ill., on account of excessive rate.

3984. *W. M. Paugh & Company v. St. Louis & San Francisco Railroad Company.* May 17, 1909. Refund of \$108.35 on 9 carloads of cattle and hogs from Helena and other points to Wichita, Kans., on account of excessive rate.

3986. *J. C. Madison v. St. Louis & San Francisco Railroad Company.* May 4, 1909. Refund of \$103.32 on 6 carloads of hogs and cattle from Goltry, Okla., to Wichita, Kans., on account of excessive rate.

3994. *F. J. Lewis Manufacturing Company v. Hocking Valley Railway Company et al.* April 6, 1909. Refund of \$32 on carload of coal tar from Toledo, Ohio, to Chicago, Ill., on account of excessive rate.

4003. *S. R. Overton v. Kansas City, Mexico & Orient Railway Company et al.* June 15, 1909. Refund of \$95.55 on carload of wheat from Thomas, Okla., to Dallas, Tex., on account of excessive rate.

4013. *MacGillis & Gibbs Company v. Chicago & North Western Railway Company et al.* June 28, 1909. Refund of \$62.49 on shipments of posts from points in Michigan to Burke and Dallas, S. Dak., on account of excessive rate.

4023. *Star Publishing Company v. Union Pacific Railroad Company et al.* May 4, 1909. Refund of \$18.18 on carload of newsprint paper from Grand Rapids, Minn., to Lincoln, Nebr., on account of excessive rate.

4041. *Acme Cement Plaster Company v. Southern Railway Company.* April 28, 1909. Refund of \$34.40 on shipment of plaster from St. Louis, Mo., to Lawrenceburg, Ky., on account of excessive rate.

4049. *Jewett Lumber Company v. Missouri Pacific Railway Company.* June 28, 1909. Refund of \$15 on carload of lumber from Longleaf, La., to Des Moines, Iowa, on account of misrouting.

4050. *Western Grocer Company v. Missouri Pacific Railway Company.* April 26, 1909. Refund of \$47.28 on carload of sorghum from McLouth, Kans., to Albert Lea, Minn., on account of misrouting.

4063. *Whitehead Brothers Company v. Boston & Maine Railroad.* May 28, 1909. Refund of \$156.76 on 8 carloads of sand from Salem, Mass., to Manchester, N. H., on account of excessive rate.

4069. *R. P. Burnett v. New York Central & Hudson River Railroad Company et al.* April 12, 1909. Refund of \$776.60 on 35 carloads of stone from Medina and Albion, N. Y., to Cleveland, Ohio, on account of excessive rate.

4073. *Nebraska-Iowa Grain Company v. Illinois Central Railroad Company.* April 26, 1909. Refund of \$20 on 4 carloads of corn from Omaha, Nebr., to Orchard and Osage, Iowa, on account of excessive rate.

4084. *Warfield Electric Company v. Great Northern Railway Company.* June 4, 1909. Refund of \$54.06 on 9 shipments of coal from Superior, Wis., to Bemidji, Minn., on account of excessive rate.

4089. *R. J. Darnell (Incorporated) v. Yazoo & Mississippi Valley Railroad Company.* April 1, 1909. Refund of \$68.92 on 7 carloads of lumber from Memphis, Tenn., to New Orleans, La., on account of excessive rate.

4093. *Evens & Howard Fire Brick Company v. Illinois Central Railroad Company.* June 11, 1909. Refund of \$9.98 on shipment of sewer pipe from Howards, Mo., to Paducah, Ky., on account of excessive rate.

4095. *Sunderland Brothers Company v. Chicago & North Western Railway Company.* April 7, 1909. Refund of \$24.47 on 2 carloads of coal from Lakonta, Iowa, to Lynch, Nebr., on account of excessive rate.

4100. *Friedlaender & Oliven Company v. Morgan's Louisiana & Texas Railroad & Steamship Company.* June 26, 1909. Refund of \$66.84 on 6 carloads of staves from Washington, Leonville, and Gold Dust, La., to New Orleans, La., on account of excessive rate.

4101. *Armour & Company v. Chesapeake & Ohio Railway Company.* April 24, 1909. Refund of \$236.68 on 7 carloads of potash from Newport News, Va., to Buena Vista, Va., on account of excessive rate.

4123. *Finkbine Lumber Company v. Illinois Central Railroad Company.* May 4, 1909. Refund of \$14.94 on 2 carloads of lumber from Wiggins, Miss., to St. Charles, Mo., on account of excessive rate.

4137. *N. T. Ritch, jr., v. Atlantic Coast Line Railroad Company et al.* June 28, 1909. Refund of \$41.25 on shipments of strawberries from Raiford, Fla., to New York, N. Y., on account of excessive rate.

4138. *Chicago, Rock Island & Pacific Railway Company and Kellogg-Birge Company v. Chicago, St. Paul, Minneapolis & Omaha Railway Company.* June 4, 1909. Refund of \$4.46 to Kellogg-Birge Company, and payment of \$49.11 to Chicago, Rock Island & Pacific Railway Company, on carload of potatoes from Beaver Creek, Minn., to Keokuk, Iowa, on account of misrouting.

4139. *Dean & Company v. Chicago, Rock Island & Pacific Railway Company et al.* April 6, 1909. Refund of \$89.14 on 3 carloads of vehicles from Pontiac, Mich., to Minneapolis, Minn., on account of excessive rate.

4144. *Great Western Sugar Company v. Illinois Central Railroad Company.* June 23, 1909. Refund of \$29.70 on shipment of sugar-beet seed from New Orleans, La., to Greeley, Colo., on account of misrouting.

4150. *Sligo Iron Store Company v. Chicago, Burlington & Quincy Railroad Company.* June 28, 1909. Refund of \$22.72 and collection waived of \$5 on shipment of coal from Lilly, Pa., to Sheridan, Wyo., on account of excessive rate.

4170. *S. Locke Breaur v. Morgan's Louisiana & Texas Railroad & Steamship Company et al.* May 19, 1909. Refund of \$158.57 on 5 carloads of rough rice from Stowell, Tex., to New Orleans, La., on account of excessive rate.

4171. *W. B. Thompson & Company v. Gulf, Colorado & Santa Fe Railway Company et al.* June 28, 1909. Refund of \$199.82 on 6 carloads of staves from Cravens and Pitkin, La., to New Orleans, La., on account of excessive rate.

4181. *Illinois Pacific Glass Company v. Southern Pacific Company et al.* June 2, 1909. Refund of \$192.84 on carload of beer bottles from Oakland, Cal., to Hermosillo, Mexico, on account of excessive rate.

4185. *Schumacher Grocery Company v. Morgan's Louisiana & Texas Railroad & Steamship Company.* April 9, 1909. Refund of \$9.47 on carload of sugar from New Orleans, La., to Eagle Pass, Tex., on account of excessive rate.

4192. *Ohio Iron & Metal Company v. Chicago, Burlington & Quincy Railroad Company.* May 20, 1909. Refund of \$7.70 on shipment of scrap iron from Peoria, Ill., to East Chicago, Ill., on account of misrouting.

4195. *S. J. Patterson v. Atlantic Coast Line Railroad Company.* June 23, 1909. Refund of \$23.81 on 2 carloads of coal from Chester Wilson Station, Pa., to Atlanta, Ga., on account of excessive rate.

4199. *American Naval Stores Company v. Louisville & Nashville Railroad Company.* May 22, 1909. Refund of \$182.21 on 12 carloads of empty barrels from Gulfport, Miss., to Pensacola, Fla., on account of excessive rate.

4200. *Licking River Lumber Company v. Chesapeake & Ohio Railway Company.* May 22, 1909. Refund of \$13.52 on carload of lumber from Farmers, Ky., to Buffalo, N. Y., on account of excessive rate.

4203. *Pickands-Magee Company v. Southern Pacific Company et al.* June 10, 1909. Refund of \$691.08 on shipment of coke from Grays Landing, Pa., to San Francisco, Cal., on account of excessive rate.

4206. *Pickands-Magee Company v. Southern Pacific Company et al.* June 10, 1909. Refund of \$1,546.23 on shipments of coke from Grays Landing, Pa., to San Francisco, Cal., on account of excessive rate.

4227. *H. D. Lee Mercantile Company v. Missouri Pacific Railway Company et al.* June 1, 1909. Refund of \$20.40 on 2 carloads of strawberries from Tyler, Tex., to Salina, Kans., on account of excessive rate.

4231. *Relief of agent of Baltimore & Ohio Southwestern Railroad Company at Sioux Falls, S. Dak.* May 14, 1909. Refund of \$24.85 on carload of bridge iron from Vincennes, Ind., to Sioux Falls, S. Dak., on account of misrouting.

4242. *Moore & Munger v. Pennsylvania Railroad Company.* May 21, 1909. Refund of \$52.99 on 6 carloads of clay from Girard Point, Pa., to Kentmere, Del., on account of excessive rate.

4248. *Mathieson Alkali Works v. Norfolk & Western Railway Company et al.* April 17, 1909. Refund of \$71.49 on shipment of caustic soda from Saltville, Va., to Eddystone, Pa., on account of excessive rate.

4258. *Florence Iron Works v. Louisville & Nashville Railroad Company et al.* June 18, 1909. Refund of \$202.82 on 27 carloads of pig iron from Ironaton, Ala., to Florence, N. J., on account of excessive rate.

4259. *International Harvester Company of America v. Wabash Railroad Company.* June 22, 1909. Refund of \$23.09 on 3 carloads of agricultural implements from Chicago, Ill., to Salisbury and Shannondale, Mo., on account of excessive rate.

4303. *J. E. Wright Company v. Baltimore & Ohio Railroad Company et al.* May 26, 1909. Refund of \$37.34 on carload of mill scale from Washington, Pa., to Jackson, Ohio, on account of excessive rate.

4313. *Sonoma Meat Company v. Southern Pacific Company.* April 17, 1909. Refund of \$318.60 on 5 carloads of horses and cattle from Lovelock, Nev., to Santa Rosa, Cal., on account of excessive rate.

4317. *Union Oil Company of California v. Southern Pacific Company et al.* April 14, 1909. Refund of \$1,111.53 on shipment of crude oil from Norwalk, Cal., to Douglas, Cal., on account of excessive rate.

4327. *Chas. L. Culton v. United States Express Company.* June 21, 1909. Refund of \$6.35 on shipment of tobacco from Edgerton, Wis., to New York, N. Y., on account of misrouting.

4331. *Nashville Plumbers & Mill Supply Company v. Southern Railway Company.* April 5, 1909. Refund of \$15.30 on carload of wrought-iron pipe from Benwood, W. Va., to Nashville, Tenn., on account of misrouting.

4332. *Minnesota Moline Plow Company v. Chicago, Rock Island & Pacific Railway Company et al.* April 5, 1909. Refund of \$31.05 on shipment of vehicles from Flint, Mich., to Minneapolis, Minn., on account of excessive rate.

4333. *D. I. Bushnell & Co. v. Missouri Pacific Railway Company.* May 6, 1909. Refund of \$171.88 on carload of cane seed from Utica, Kans., to St. Louis, Mo., on account of excessive rate.

4334. *American Steel & Wire Company v. Pennsylvania Company.* May 27, 1909. Refund of \$3 on shipment of fence wire from Newburg, Ohio, to Rockford, Ill., on account of misrouting.

4335. *Excelsior Powder Manufacturing Company v. St. Louis & San Francisco Railroad Company.* April 24, 1909. Refund of \$70.19 on 4 carloads of nitrate of soda from Locust Point, Md., to Holmes Park, Mo., on account of excessive rate.

4340. *The Kern Company (Limited) v. Morgan's Louisiana & Texas Railroad & Steamship Company.* June 26, 1909. Refund of \$277.79 on 15 carloads of staves from Port Barre and Beggs, La., to Gretna, La., on account of excessive rate.

4345. *Dunbar Tie Company v. Illinois Central Railroad Company et al.* June 28, 1909. Refund of \$14 on shipment of lumber from Bardwell, Ky., to Rock Island, Ill., on account of excessive rate.

4356. *Mathieson Alkali Works v. Norfolk & Western Railway Company.* April 23, 1909. Refund of \$47.55 on shipment of caustic soda from Saltville, Va., to East Allentown, Pa., on account of excessive rate.

4359. *Chicago, Burlington & Quincy Railroad Company v. Illinois Central Railroad Company.* April 3, 1909. Refund of \$135 on shipments during August, 1906, on account of excessive switching charges.

4363. *International Harvester Company v. Cleveland, Cincinnati, Chicago & St. Louis Railway Company*. April 1, 1909. Refund of \$2.45 on shipment of agricultural implements from Chicago, Ill., to Madisonville, Tenn., on account of misrouting.

4370. *W. H. Megee, jr., v. Pennsylvania Railroad Company*. May 7, 1909. Refund of \$19.87 on shipment of manure from North Philadelphia, Pa., to Milton, Del., on account of excessive rate.

4374. *Hanford Produce Company v. Chicago & North Western Railway Company*. April 13, 1909. Refund of \$127.20 on 3 shipments of eggs from Sioux City, Iowa, to Chicago, Ill., on account of excessive rate.

4376. *Summit Lumber Company v. Chicago, Rock Island & Pacific Railway Company*. June 4, 1909. Refund of \$28.16 on carload of lumber from Randolph, La., to Cumberland, Ohio, on account of misrouting.

4382. *Tuffli Brothers Pig Iron & Coke Company v. Morgan's Louisiana & Texas Railroad & Steamship Company et al.* April 6, 1909. Refund of \$86.48 on carload of pig-iron from Dayton, Tenn., to Lake Charles, La., on account of excessive rate.

4384. *R. E. Gardner v. Missouri, Kansas & Texas Railway Company*. June 16, 1909. Refund of \$79.56 on 2 shipments of vehicles from St. Louis, Mo., to Emporia, Kans., on account of excessive rate.

4386. *Gill & Company (Incorporated), v. Illinois Central Railroad Company*. May 7, 1909. Refund of \$9.60 on shipment of fluor spar from Marion, Ky., to Philadelphia, Pa., on account of misrouting.

4396. *G. Mathes Sons Rag Company v. Illinois Central Railroad Company*. June 18, 1909. Refund of \$2 on carload of junk from Greenville, Miss., to St. Louis, Mo., on account of excessive rate.

4407. *Wells, Higman Company v. Chicago, Rock Island & Pacific Railway Company*. June 17, 1909. Refund of \$261.25 on carload of grape baskets from St. Joseph, Mich., to Denver, Colo., on account of excessive rate.

4413. *Owensboro Wagon Company v. Chicago, Rock Island & Pacific Railway Company*. April 1, 1909. Refund of \$24.90 on carload of lumber from Griffithsville, Ark., to Owensboro, Ky., on account of misrouting.

4414. *C. J. Carter Lumber Company v. Chicago, Rock Island & Pacific Railway Company*. June 19, 1909. Refund of \$56.29 on carload of lumber from Griffithsville, Ark., to Moberly, Mo., on account of misrouting.

4424. *F. J. Kissel Company v. Union Pacific Railroad Company et al.* June 4, 1909. Refund of \$30 on shipment of rice from Beaumont, Tex., to Ogden, Utah, on account of excessive rate.

4426. *Chesapeake & Ohio Coal Agency Company v. Chesapeake & Ohio Railway Company*. April 29, 1909. Refund of \$66.78 on 11 carloads of coal from Wyndal, W. Va., to Spray, N. C., on account of excessive rate.

4429. *Western Lumber & Pole Company v. Oregon Railroad & Navigation Company*, May 6, 1909. Refund of \$383.76 on shipment of poles from Cataldo, Idaho, to Tonopah, Nev., on account of misrouting.

4444. *William J. Starr v. Chicago, St. Paul, Minneapolis & Omaha Railway Company*. April 14, 1909. Refund of \$5.18 on carload of fuel wood from Weston, Wis., to Windom, Minn., on account of excessive rate.

4445. *Summit Lumber Company v. Chicago, Rock Island & Pacific Railway Company*. May 20, 1909. Refund of \$14.70 on carload of lumber from Randolph, La., to Reading, Pa., on account of misrouting.

4446. *Menzel & Jeffery Company v. Chicago, St. Paul, Minneapolis & Omaha Railway Company*. May 17, 1909. Refund of \$45.82 on shipment of scrap iron from Sioux City, Iowa, to Minneapolis, Minn., on account of excessive rate.

4449. *Central Pennsylvania Lumber Company v. Philadelphia & Reading Railway Company et al.* April 17, 1909. Refund of \$412.46 on 65 carloads of sawdust from Williamsport, Pa., to Perth Amboy, N. J., on account of excessive rate.

4455. *William Gorenflo & Company v. Louisville & Nashville Railroad Company*. May 7, 1909. Refund of \$36.90 on shipment of coke from Ensley, Ala., to Biloxi, Miss., on account of excessive rate.

4464. *Solomon-Johnson Grocery Company v. Yazoo & Mississippi Valley Railroad Company*. April 12, 1909. Refund of \$1.95 on shipment of sugar from New Orleans, La., to Helena, Ark., on account of misrouting.

4465. *Chehalis Furniture & Manufacturing Company v. Northern Pacific Railway Company*. April 21, 1909. Refund of \$27.56 on shipment of furniture from Chehalis, Wash., to Salt Lake City, Utah, on account of excessive rate.

4478. *American Cigar Company v. Seaboard Air Line Railway*. June 18, 1909. Refund of \$143.33 on 3 shipments of tobacco from Midway, Fla., to Petersburg, Va., on account of excessive rate.

4480. *Duluth Log Company v. Northern Pacific Railway Company et al.* June 1, 1909. Refund of \$0.80 on shipment of poles from Blueberry, Wis., to New Albin, Iowa, on account of nonallowance for car stakes.

4483. *Minneapolis Moline Plow Company v. Chicago, Rock Island & Pacific Railway Company et al.* April 6, 1909. Refund of \$144.63 on 6 carloads of vehicles from Flint, Mich., to Minneapolis, Minn., on account of excessive rate.

4484. *Great Northern Implement Company v. Chicago, Rock Island & Pacific Railway Company et al.* June 19, 1909. Refund of \$64.51 on 2 carloads of vehicles from Flint, Mich., and Indianapolis, Ind., to Minneapolis, Minn., on account of excessive rate.

4486. *Lindsay Brothers v. Chicago, Rock Island & Pacific Railway Company et al.* April 6, 1909. Refund of \$55.88 on 2 carloads of vehicles from Pontiac, Mich., to Minneapolis, Minn., on account of excessive rate.

4491. *Tuthill Spring Company v. Illinois Central Railroad Company*. May 11, 1909. Refund of \$12.45 on shipment of wagon springs from Chicago, Ill., to Monroe, Wis., on account of excessive rate.

4494. *Carney Coal Company v. Chicago, Burlington & Quincy Railroad Company et al.* June 14, 1909. Refund of \$574.65 on 17 carloads of coal from Alger, Wyo., to Elkhorn, Mont., on account of excessive rate.

4498. *Friedlaender & Oliven Company v. Morgan's Louisiana & Texas Railroad & Steamship Company*. May 26, 1909. Refund of \$44.94 on 3 carloads of staves from Leonville, La., to New Orleans, La., on account of excessive rate.

4499. *Metcalf & Parks v. Atchison, Topeka & Santa Fe Railway Company*. April 6, 1909. Refund of \$199.99 on carload of honey from Mesilla Park, N. Mex., to Chicago, Ill., on account of excessive rate.

4500. *W. L. Booth v. Atchison, Topeka & Santa Fe Railway Company*. April 6, 1909. Refund of \$589.40 on 10 carloads of sheep from Holbrook, Ariz., to Edgerton, Kans., on account of excessive rate.

4503. *American Cigar Company v. Pennsylvania Railroad Company et al.* April 17, 1909. Refund of \$94.05 on 6 carloads of tobacco from New Holland, etc., Pa., to Richmond, Va., on account of excessive rate.

4505. *Purington Paving Brick Company v. Chicago, Burlington & Quincy Railroad Company et al.* April 14, 1909. Refund of \$24.38 on 7 carloads of brick from Galesburg, Ill., to Chippewa Falls, Wis., on account of excessive rate.

4507. *Fairmont Creamery Company v. Chicago & North Western Railway Company*. June 1, 1909. Refund of \$13.88 on shipment of household goods from York, Nebr., to Manning, Iowa, on account of excessive rate.

4527. *Rhodes-Haverty Furniture Company v. Illinois Central Railroad Company et al.* May 26, 1909. Refund of \$18 on carload of furniture from Chicago, Ill., to Atlanta, Ga., on account of excessive rate.

4534. *The Albert Dickinson Company v. Chicago, St. Paul, Minneapolis & Omaha Railway Company*. April 9, 1909. Refund of \$248.93 on 3 carloads of millet seed from Vermillion, Kans., to Minneapolis, Minn., on account of excessive rate.

4536. *H. B. Messenger v. Pennsylvania Railroad Company*. April 24, 1909. Refund of \$23.66 on carload of kindling wood from Federalsburg, Md., to Rosemont, Pa., on account of excessive rate.

4545. *Piedmont Stone Company v. Atlanta & West Point Railroad Company*. April 6, 1909. Refund of \$67.95 on 2 carloads of stone from Atlanta, Ga., to Auburn, Ala., on account of excessive rate.

4547. *Armour & Company v. El Paso & Southwestern System*. June 11, 1909. Refund of \$35.77 on shipment of packing-house products from Fort Worth, Tex., to Douglas, Ariz., on account of excessive rate.

4549. *United States Cast Iron Pipe & Foundry Company v. St. Louis & San Francisco Railroad Company*. April 3, 1909. Refund of \$44.20 on shipment of iron pipe from Bessemer, Ala., to Wilburton, Ind. T., on account of misrouting.

4550. *Lyon Cypress Lumber Company v. Illinois Central Railroad Company.* May 27, 1909. Refund of \$5 on carload of lumber from Garyville, La., to Mason City, Ill., on account of misrouting.

4551. *Riddle-Rehbein Manufacturing Company v. Illinois Central Railroad Company.* May 25, 1909. Refund of \$14 on 7 carloads of lumber from Natchez, Miss., to St. Louis, Mo., on account of excessive switching charges.

4560. *West Weber Canning Company v. Southern Pacific Company.* May 15, 1909. Refund of \$17.46 on 2 carloads of cans from Cragin, Ill., and 1 carload from Maywood, Ill., to West Weber, Utah, on account of excessive rate.

4566. *Jules Block & Company v. International & Great Northern Railroad Company et al.* April 20, 1909. Refund of \$31.50 on 1 carload of junk bottles from Houston, Tex., to New Orleans, La., on account of excessive rate.

4570. *McPhee & McGinnity Company v. Chicago, Rock Island & Pacific Railway Company.* June 28, 1909. Refund of \$30.03 on 1 carload of lumber shipped from Camden, Tex., to Denver, Colo., on account of misrouting.

4575. *M. O. Coggins Company v. Louisville & Nashville Railroad Company et al.* May 29, 1909. Refund of \$51.21 on 4 carloads of radishes shipped from Greenville, Ala., to Pittsburg, Pa., on account of excessive rate.

4580. *Kentucky Midland Coal Company v. Illinois Central Railroad Company.* June 15, 1909. Refund of \$702.17 on 3 carloads of coal from Central City, Ky., to Chicago, Ill., on account of excessive rate.

4584. *W. P. Brown & Sons Lumber Company v. Louisville & Nashville Railroad Company et al.* May 5, 1909. Refund of \$10.57 on carload of lumber from Louisville, Ky., to Montreal, Canada, on account of excessive rate.

4587. *J. Bloom v. Wabash Railroad Company.* May 25, 1909. Refund of \$8 on shipment of scrap iron from Gary, Ind., to Chicago, Ill., on account of excessive rate.

4588. *The Kern Company (Limited) v. Morgan's Louisiana & Texas Railroad & Steamship Company.* June 26, 1909. Refund of \$118.95 on 6 carloads of claret staves from Port Barre to Gretna and New Orleans, La., on account of excessive rate.

4593. *Horvitz Brothers v. Chicago & Eastern Illinois Railroad Company et al.* May 11, 1909. Refund of \$81.35 on 6 carloads of watermelons from southeastern Missouri points to Chicago, Ill., on account of excessive rate.

4596. *The Shafton Company v. Chicago & Eastern Illinois Railroad Company et al.* June 22, 1909. Refund of \$240.26 on 17 carloads of watermelons from southeastern Missouri points to Chicago, Ill., on account of excessive rate.

4598. *Sachs, Harris & Company v. Chicago & Eastern Illinois Railroad Company et al.* April 14, 1909. Refund of \$42.45 on 3 carloads of watermelons from Clarkton, Mo. to Chicago, Ill., on account of excessive rate.

4599. *Western Produce Company v. Chicago & Eastern Illinois Railroad Company et al.* April 26, 1909. Refund of \$42.40 on 3 carloads of watermelons from Malden, Mo., to Chicago, Ill., on account of excessive rate.

4604. *Simon Freedman Company v. Chicago & Eastern Illinois Railroad Company et al.* April 3, 1909. Refund of \$40.85 on 3 carloads of watermelons from Malden and McGuires, Mo., to Chicago, Ill., on account of excessive rate.

4605. *Ogden Commission Company (Incorporated) v. Southern Pacific Company.* May 27, 1909. Refund of \$98.25 on 3 carloads of melons from Clovis and Kearney, Cal., to Ogden, Utah, on account of excessive rate.

4611. *National Rice Milling Company v. Morgan's Louisiana & Texas Railroad & Steamship Company et al.* April 15, 1909. Refund of \$97.50 on carload of rice from Cypress, Tex., to New Orleans, La., on account of excessive rate.

4612. *San Antonio Meat Company v. San Pedro, Los Angeles & Salt Lake Railroad Company.* April 22, 1909. Refund of \$162 on 3 carloads of cattle and sheep from Lund, Utah, to Pomona, Cal., on account of excessive rate.

4620. *Cook Broom Company v. Chicago, Rock Island & Pacific Railway Company.* June 7, 1909. Refund of \$58.40 on shipment of broom corn from Elk City, Okla., to Hot Springs, Ark., on account of excessive rate.

4623. *Mengel Box Company v. Illinois Central Railroad Company.* April 19, 1909. Refund of \$10.36 on 3 carloads of lumber from Leland, Miss., to St. Louis, Mo., on account of excessive switching charges.

4629. *Shasta Water Company v. Southern Pacific Company*. May 28, 1909. Collection waived of \$259.88 on shipment of mineral water from Shasta Springs, Cal., to Portland, Oreg., on account of excessive rate.

4653. *Western Coal & Mining Company v. Chicago & Alton Railroad Company*. May 1, 1909. Refund of \$14.50 on 2 carloads of coal from Buffalo, N. Y., to Jefferson City, Mo., on account of excessive rate.

4657. *National Refining Company v. Atchison, Topeka & Santa Fe Railway Company*. May 4, 1909. Refund of \$102.50 on shipment of carbon oil from Coffeyville, Kans., to Memphis, Tenn., on account of excessive rate.

4660. *F. C. Papendick & Company v. St. Louis & San Francisco Railroad Company et al.* May 17, 1909. Refund of \$94.80 on shipment of live poultry from Everton, Ark., to Chicago, Ill., on account of excessive rate.

4663. *Brown Commission Company v. Colorado & Southern Railway Company et al.* April 3, 1909. Refund of \$67.80 on shipment of bananas from New Orleans, La., to Colorado Springs, Colo., on account of excessive rate.

4681. *Geo. Rupp & Company v. Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company et al.* June 11, 1909. Refund of \$18.58 on 2 carloads of bulk hog meats from Hamilton, Ontario, to St. Louis, Mo., on account of excessive rate.

4683. *John Galt & Sons (Incorporated) v. Bangor & Portland Railway Company et al.* April 3, 1909. Refund of \$96.30 on 6 carloads of roofing slate from Pen Argyl, Pa., and Wind Gap, Pa., to New York, N. Y., on account of excessive rate.

4693. *McPhee & McGinnity Company v. Chicago, Rock Island & Pacific Railway Company*. May 5, 1909. Refund of \$42.28 on carload of lumber from Camden, Tex., to Denver, Colo., on account of misrouting.

4710. *C. M. Moderwell & Company v. Illinois Central Railroad Company*. June 12, 1909. Refund of \$68.30 on carload of coal from Wilderman, Ill., to Burr, Minn., on account of misrouting.

4713. *Albert Miller & Company v. Illinois Central Railroad Company*. April 26, 1909. Refund of \$12.59 on shipment of hay from Chicago, Ill., to Jacksonville, Fla., on account of excessive rate.

4714. *Brooks-Scanlon Company v. Illinois Central Railroad Company*. June 4, 1909. Refund of \$8 on shipment of laths from Kentwood, La., to Valparaiso, Ind., on account of misrouting.

4716. *Sunderland Brothers Company v. Union Pacific Railroad Company et al.* May 10, 1909. Refund of \$154.76 on 6 carloads of coal from Omaha, Nebr., to Buhl, Idaho, on account of excessive rate.

4721. *Southern Cotton Oil Company v. Central of Georgia Railway Company et al.* May 5, 1909. Refund of \$175.36 on 2 carloads of cotton-seed oil from Andalusia, Ala., to New Orleans, La., on account of excessive rate.

4727. *Geo. B. Higgins v. Chicago, St. Paul, Minneapolis & Omaha Railway Company et al.* May 6, 1909. Refund of \$7.52 on shipment of potatoes from Crystal, Minn., to New Orleans, La., on account of excessive rate.

4731. *United States Gypsum Company v. Lehigh Valley Railroad Company et al.* May 5, 1909. Refund of \$147.19 on 3 carloads of gypsum rock from Union Springs, N. Y., to Siegfried, Pa., on account of excessive rate.

4738. *Southern Cypress Manufacturing Association v. Yazoo & Mississippi Valley Railroad Company*. April 9, 1909. Refund of \$5 on shipment of lumber from Garyville, La., to Mason City, Ill., on account of misrouting.

4746. *Stroud & Fletcher v. New Orleans & Northeastern Railroad Company*. May 21, 1909. Refund of \$8.88 on carload of sugar from New Orleans, La., to Nashville, Tenn., on account of misrouting.

4753. *National Ice & Cold Storage Company v. Southern Pacific Company*. May 15, 1909. Refund of \$114.67 on 3 carloads of ice from Iceland, Cal., to Perth, Nev., on account of excessive rate.

4754. *Chas. W. Boch v. Pennsylvania Railroad Company*. May 3, 1909. Refund of \$12.61 on carload of cord wood from Philadelphia, Pa., to Trenton, N. J., on account of excessive rate.

4759. *Laurel Oil & Fertilizer Company v. Gulf & Ship Island Railroad Company*. April 3, 1909. Refund of \$13.20 on 2 carloads of bagging and ties from New Orleans, La., to Laurel, Miss., on account of excessive rate.

4762. *Mendota Coal Company v. Chicago, Burlington & Quincy Railroad Company.* April 8, 1909. Refund of \$34.39 on 3 carloads of ice from Fort Madison, Iowa, to Mendota, Mo., on account of excessive rate.

4770. *Halstead Milling & Elevator Company v. Atchison, Topeka & Santa Fe Railway Company et al.* May 26, 1909. Refund of \$287.28 on 28 carloads of flour from Halstead, Kans., to various Arizona points, on account of excessive rate.

4776. *R. J. Rhodes v. Norfolk & Western Railway Company et al.* April 6, 1909. Refund of \$5.60 on shipment of chairs from Walkertown, N. C., to Newport News, Va., on account of excessive rate.

4780. *S. B. Nicholson v. Atchison, Topeka & Santa Fe Railway Company.* May 29, 1909. Refund of \$92.55 on shipment of cotton seed from Perkins, Okla., to Arkansas City, Kans., on account of excessive rate.

4789. *Frost-Johnson Lumber Company v. St. Louis Southwestern Railway Company.* March 31, 1909. Refund of \$6.52 on shipment of lumber from Alden Bridge, La., to Beaver Dam, Wis., on account of misrouting.

4797. *Combined Foundry Supply Company v. Erie Railroad Company.* June 28, 1909. Refund of \$17.80 on carload of fire clay from Freeman, Pa., to Attica, N. Y., on account of excessive rate.

4801. *The Quaker Oats Company v. Illinois Central Railroad Company.* June 18, 1909. Refund of \$10.36 on 3 carloads of oats from Cedar Rapids, Iowa, to Mobile, Ala., on account of misrouting.

4809. *Fuller & Johnson Manufacturing Company v. Chicago, Rock Island & Pacific Railway Company et al.* April 16, 1909. Refund of \$81.89 on 4 carloads of vehicles from Flint, Mich., to Minneapolis, Minn., on account of excessive rate.

4810. *Geo. Straut Warehouse & Grain Company v. Southern Pacific Company.* May 4, 1909. Refund of \$116.90 on shipment of hay from Perth, Nev., to Oakland, Cal., on account of excessive rate.

4817. *Richmond Cotton Oil Company v. Nashville, Chattanooga & St. Louis Railway et al.* June 2, 1909. Refund of \$58.01 on shipment of cotton-seed hulls from Chattanooga, Tenn., to Stilesboro, Ga., on account of excessive rate.

4821. *Ticonderoga Pulp & Paper Company v. New York Central & Hudson River Railroad Company et al.* June 28, 1909. Refund of \$327 on shipments of bleach from East Boston, Mass., to Ticonderoga, N. Y., on account of excessive rate.

4827. *Clark & Wilkins v. New York Central & Hudson River Railroad Company.* April 1, 1909. Refund of \$19.41 on 2 carloads of cord wood from New Paltz, N. Y., to New York, N. Y., on account of excessive rate.

4828. *Swift & Company v. Texas & Pacific Railway Company et al.* April 1, 1909. Refund of \$58.48 on shipment of soap from Fort Worth, Tex., to Opelousas, La., on account of excessive rate.

4838. *H. Stevens Sons Company v. Central of Georgia Railway Company et al.* April 14, 1909. Refund of \$29.20 on shipment of sewer pipe from Macon, Ga., to Florence, S. C., on account of excessive rate.

4845. *United States Leather Company v. Chicago, Indianapolis & Louisville Railway Company.* April 21, 1909. Refund of \$22.18 on carload of hides from Indianapolis, Ind., to Stanley, Wis., on account of excessive rate.

4846. *A. Waller & Company v. Illinois Central Railroad Company.* May 26, 1909. Refund of \$38.76 on shipments of ear corn from Griffin and New Harmony, Ind., to Henderson, Ky., on account of excessive weight.

4851. *United States Cast Iron Pipe & Foundry Company v. St. Louis & San Francisco Railroad Company.* June 11, 1909. Refund of \$303.32 on 3 shipments of cast-iron pipe from Bessemer, Ala., to Wilburton, Ind. T., on account of misrouting.

4852. *Geo. W. White v. Chicago, Rock Island & Pacific Railway Company.* June 19, 1909. Refund of \$23.75 on shipment of hay from Perlee, Iowa, to Atlanta, Ga., on account of misrouting.

4855. *H. T. Laidlaw v. Atchison, Topeka & Santa Fe Railway Company.* April 3, 1909. Refund of \$110.36 on shipment of hay from Yates Center, Kans., to La Junta, Colo., on account of excessive rate.

4857. *West Virginia Pulp & Paper Company v. Western Maryland Railroad Company et al.* June 16, 1909. Refund of \$115.98 on 7 shipments of sulphur from Baltimore, Md., to Covington, Va., on account of excessive rate.

4858. *Upham & Alger v. Yazoo & Mississippi Valley Railroad Company et al.* June 19, 1909. Refund of \$12.39 on shipment of lumber from Turners, Miss., to Kansas City, Mo., on account of excessive rate.

4862. *B. Voigt v. Atchison, Topeka & Santa Fe Railway Company et al.* May 6, 1909. Refund of \$135.59 on 2 shipments of flint pebbles from Galveston, Tex., to Independence, Kans., on account of excessive rate.

4863. *Kapowsin Lumber Company v. Northern Pacific Railway Company et al.* May 28, 1909. Refund of \$36 on shipment of fir lumber from Kapowsin, Wash., to Pullman, Ill., on account of excessive minimum carload weight.

4864. *The Chazy Marble Lime Company v. New York, New Haven & Hartford Railroad Company et al.* June 12, 1909. Refund of \$9 on 4 shipments of lime from South Framingham, Mass., to Fall River, Mass., on account of excessive rate.

4867. *Warner Sugar Refining Company v. New York Central & Hudson River Railroad Company.* June 22, 1909. Refund of \$16.16 on 2 carloads of sugar from Edgewater, N. J., to Rochester, N. Y., on account of excessive rate.

4868. *Warner Sugar Refining Company v. New York Central & Hudson River Railroad Company.* June 22, 1909. Refund of \$11.17 on 2 carloads of sugar from Edgewater, N. J., to Kingston, N. Y., on account of excessive rate.

4872. *The Illinois Seed Company v. Illinois Central Railroad Company.* April 21, 1909. Refund of \$6 on 2 shipments of grain from Minneapolis, Minn., to Chicago, Ill., on account of excessive rate.

4876. *Nye-Schneider-Fowler Company v. Chicago & Northwestern Railway Company.* June 11, 1909. Refund of \$177.62 on shipment of oats from Lynch, Nebr., to Casper, Wyo., on account of excessive rate.

4877. *Edgar Zinc Company v. International & Great Northern Railroad Company.* May 28, 1909. Refund of \$617.14 on shipments of calamine from Laredo, Tex., to Carondelet, Mo., on account of excessive rate.

4879. *Stoddard, Gilbert & Company v. New York Central & Hudson River Railroad Company.* June 22, 1909. Refund of \$3.35 on carload of sugar from Edgewater, N. J., to Westfield, Mass., on account of excessive rate.

4881. *Jno. A. Roebling Sons & Company v. Philadelphia & Reading Railway Company.* May 7, 1909. Refund of \$1.75 on shipment of copper wire from Trenton, N. J., to Neffs, Ohio, on account of misrouting.

4889. *Amarillo Gas Company v. Atchison, Topeka & Santa Fe Railway Company et al.* April 3, 1909. Refund of \$55.79 on 2 carloads of oil from Caney, Kans., to Amarillo, Tex., on account of excessive rate.

4903. *Wilke & Ruge v. Chicago & Eastern Illinois Railroad Company et al.* April 5, 1909. Refund of \$16.50 on shipment of sand from Lake, Ind., to Beecher, Ill., on account of excessive rate.

4911. *Hamilton Flour Mill Company v. Northern Pacific Railway Company.* June 1, 1909. Refund of \$234 on carload of flour from Hamilton, Mont., to Tacoma, Wash., on account of excessive rate.

4914. *Manhattan Malting Company v. Northern Pacific Railway Company.* May 5, 1909. Refund of \$500 on 2 carloads of malt from Manhattan, Mont., to Bellingham, Wash., on account of excessive rate.

4915. *The Grasselli Chemical Company v. Wisconsin Central Railway Company et al.* April 14, 1909. Refund of \$381.13 on shipments of zinc ore from Butte, Mont., to Cleveland, Ohio, on account of excessive rate.

4916. *O'Neil Oil & Paint Company v. Chicago, Milwaukee & St. Paul Railway Company et al.* June 7, 1909. Refund of \$16.80 on shipment of gasoline from Milwaukee, Wis., to Laurium, Mich., on account of excessive rate.

4919. *Mason City Brick & Tile Company v. Iowa Central Railway Company et al.* June 1, 1909. Refund of \$35.62 on 3 shipments of drain tile from Mason City, Iowa, to New Prague, Minn., on account of excessive rate.

4921. *Northern California Lumber Company v. Southern Pacific Company.* May 4, 1909. Refund of \$233.03 on shipments of lumber from Latham, Oreg., to Hilt, Cal., on account of excessive rate.

4924. *Bayou City Rice Mills Company v. Galveston, Harrisburg & San Antonio Railway Company et al.* May 22, 1909. Refund of \$15.48 on shipment of rice from Houston, Tex., to Charleston, S. C., on account of excessive rate.

4925. *E. C. Joullian Packing Company v. Morgan's Louisiana & Texas Railroad & Steamship Company et al.* April 20, 1909. Refund of \$10.98 on carload of canned oysters from Violet, La., to Waco, Tex., on account of excessive rate.

4935. *Utah Grain & Elevator Company v. San Pedro, Los Angeles & Salt Lake Railroad Company.* May 7, 1909. Refund of \$89.55 on shipment of oats from Idaho Falls, Idaho, to Caliente, Nev., on account of excessive rate.

4941. *Copper Queen Consolidated Mining Company v. El Paso & Southwestern System et al.* April 14, 1909. Refund of \$365.31 on shipment of pig iron from Gadsden, Ala., to Douglas, Ariz., on account of excessive rate.

4942. *Copper Queen Consolidated Mining Company v. El Paso & Southwestern System et al.* April 6, 1909. Refund of \$946.26 on shipment of pig iron from Anniston, Ala., to Douglas, Ariz., on account of excessive rate.

4949. *D. Goldstein v. Chicago, Burlington & Quincy Railroad Company.* April 22, 1909. Refund of \$79.90 on shipment of scrap iron from Cambridge, Nebr., to Denver, Colo., on account of excessive rate.

4950. *Sunderland Brothers Company v. Chicago, Burlington & Quincy Railroad Company et al.* April 3, 1909. Refund of \$10.64 on 2 carloads of cement from Iola, Kans., to Grand Island, Nebr., on account of excessive rate.

4951. *Homer Earl v. Chicago, Burlington & Quincy Railroad Company.* April 24, 1909. Refund of \$2.84 on shipment of silica from Woodruff, Kans., to Lincoln, Nebr., on account of excessive rate.

4952. *Sunderland Brothers Company v. Chicago, Burlington & Quincy Railroad Company et al.* June 21, 1909. Refund of \$5.70 on shipment of cement from Iola, Kans., to Lincoln, Nebr., on account of excessive rate.

4956. *Fidelity Lumber Company v. Idaho & Washington Northern Railroad Company.* June 21, 1909. Refund of \$735.84 on shipments of lumber from Newport, Wash., to various points in North Dakota, on account of excessive rate.

4964. *G. E. Smith v. Southern Railway Company.* June 2, 1909. Refund of \$18.59 on carload of lumber from Andrews, N. C., to Long Island City, N. Y., on account of misrouting.

4966. *R. C. Thompson v. Southern Railway Company.* June 4, 1909. Refund of \$7.50 on carload of cotton-seed meal from Charlotte, N. C., to Riverton, Va., on account of excessive rate.

4968. *Reid, Murdoch & Company v. Chicago & North Western Railway Company.* May 6, 1909. Refund of \$2.94 on shipment of sauerkraut from Chicago, Ill., to Deadwood, S. Dak., on account of excessive rate.

4969. *George Hogan & Company v. Southern Railway Company.* May 28, 1909. Refund of \$416.11 on 5 carloads of bale cotton from Norfolk, Va., to Lindale, Ga., on account of excessive rate.

4973. *Balfour Pink Granite Company v. Southern Railway Company et al.* April 12, 1909. Refund of \$109.76 on shipment of stone from Granite Quarry, N. C., to West-erly, R. I., on account of excessive rate.

4977. *Lewis, Hubbard & Company v. Norfolk & Western Railway Company et al.* April 13, 1909. Refund of \$18 on shipment of canned vegetables from Boones Mill, Va., to South Fayette, W. Va., on account of excessive rate.

4980. *Cheek Neal Coffee Company v. Southern Railway Company.* May 22, 1909. Refund of \$9.05 on shipment of coffee from New York, N. Y., to Nashville, Tenn., on account of misrouting.

4986. *Charleston (S. C.) Mining & Manufacturing Company v. Atlantic Coast Line Railroad Company et al.* Refund of \$36.74 on 2 carloads of coal from Quin-nemant, W. Va., to Ashley Junction, S. C., on account of excessive rate.

4988. *White Oak Coal Company v. Atlantic Coast Line Railroad Company.* May 14, 1909. Refund of \$841.39 on 39 carloads of coal from Thurmond, W. Va., to Ashley Junction, S. C., on account of excessive rate.

4989. *Ashland Iron & Steel Company v. Wisconsin Central Railway Company.* April 21, 1909. Refund of \$16.87 on shipment of pig iron from Ashland, Wis., to Elizabeth-port, N. J., on account of misrouting.

5001. *Lake Arthur Rice Milling Company v. Louisiana Western Railroad Company, et al.* May 26, 1909. Refund of \$72 on carload of brewers' rice from Lake Arthur, La., to Kansas City, Mo., on account of excessive rate.

1492. *Albert Ironworks Company v. Wabash Railroad Company*. May 21, 1909. Refund of \$21.75 on 2 carloads of machinery used from Ubell, Iowa, to Chicago, Ill., on account of excessive rate.

1493. *J. H. Turner v. Atchison, Topeka & Santa Fe Railway Company*. June 15, 1909. Refund of \$1.00 on 2 carloads of hay from Virga, Kans., to Manhattan and Lee, Kansas, on account of excessive rate.

1494. *Northern Iron Company v. Lehigh & Hudson Company*. May 7, 1909. Refund of \$1.50 on 2 carloads of castings from Allentown, Pa., to Standish, N. Y., on account of excessive rate.

1495. *P. P. W. and Son's Company v. Chicago, Burlington & Quincy Railroad Company*. April 7, 1909. Refund of \$5.00 on 4 shipments of oats from Leon and Keshena, Iowa, to Iowa, Mo., and East St. Louis, Ill., on account of excessive rate.

1496. *The B. B. Martin Company v. Baltimore & Ohio Railroad Company*. May 17, 1909. Refund of \$1.00 on shipment of lumber from Hager, Md., to Lancaster, Pa., on account of excessive rate.

1497. *J. H. Turner v. Atchison, Topeka & Santa Fe Railway Company*. April 6, 1909. Refund of \$45.00 on shipment of hay from Florence, Kans., to Rocky Ford, Colo., on account of excessive rate.

1498. *Carnegie Steel Company v. Baltimore & Ohio Railroad Company*. June 18, 1909. Refund of \$5.40 on shipment of bar steel from Youngstown, Ohio, to Allentown, Pa., on account of excessive rate.

1499. *Anderson-Buch Brewing Association v. St. Louis & San Francisco Railroad Company*. May 21, 1909. Refund of \$31 on 2 shipments of empty beer packages from Hot Springs, Ark., to St. Louis, Mo., on account of excessive rate.

1500. *Schmucka Bridge Supply & Lumber Company v. Chicago, Rock Island & Pacific Railway Company*. May 20, 1909. Refund of \$4.30 on shipment of lumber from Brainerd, Ark., to Mineral, Kans., on account of misrouting.

W. M. Moring & Elevator Company v. Southern Pacific Company. April 5, 1909. Refund of \$4.05 on shipment of flour from Ogden, Utah, to Golconda, Nev., on account of excessive rate.

W. M. Moring & Elevator Company v. Chicago, Rock Island & Pacific Railway Company. Refund of \$21.20 on shipment of agricultural implements from Moline, Ill., to Minneapolis, Minn., on account of misrouting.

Century Milling Company v. Chicago, Rock Island & Pacific Railway Co. May 25, 1909. Refund of \$6.13 on shipment of wheat from Guyman, Tex., on account of excessive rate.

San-Susua Colony v. Southern Pacific Company. June 10, 1909. Refund of \$1.00 on shipment of staves from Winnfield, La., to Asti, Cal., on account of misrouting.

San-Susua Colony v. Atchison, Topeka & Santa Fe Railway Company. Refund of \$1.67 on shipment of 16 packages of tea from San Francisco, Cal., to Houston, Tex., on account of excessive rate.

W. T. Bradley v. Philadelphia & Reading Railway Company. May 4, 1909. Refund of \$2.00 on 3 carloads of chemical lime from Palmyra, Pa., to Camden, N. J., on account of excessive rate.

W. R. Ellis v. Southern Pacific Company et al. March 27, 1909. Refund of \$1.00 on 3 carloads of crude oil from Los Angeles, Cal., to Kelvin, Ariz., on account of excessive rate.

Lead Mining & Milling Company v. Southern Pacific Company et al. Refund of \$340.17 on 2 carloads of crude oil from Los Angeles, Cal., to Phoenix, Ariz., on account of excessive rate.

W. H. Shoemaker & Company v. Philadelphia & Reading Railway Company. Refund of \$21.60 on 3 carloads of fertilizer from Philadelphia, Pa., to New York, N. Y., on account of excessive rate.

Central Ice Company v. Delaware, Lackawanna & Western Railroad Company. June 12, 1909. Refund of \$72.75 on 3 carloads of ice from Hopatcong, N. J., to New York, N. Y., on account of excessive rate.

Wabash Stone Manufacturing Company v. Wabash Railroad Company et al. Refund of \$26.73 on carload of stoves from Quincy, Ill., to Clovis, N. M., on account of excessive rate.

5067. *Springville Canning Company v. Buffalo & Susquehanna Railway Company et al.* June 19, 1909. Refund of \$43.20 on shipment of canned vegetables from Springville, N. Y., to Philadelphia, Pa., on account of excessive rate.

5072. *Townley Shingle Company v. St. Louis Southwestern Railway Company.* June 28, 1909. Refund of \$48.69 on shipment of broom handles from Townley, Mo., to Des Moines, Iowa, on account of excessive rate.

5076. *E. S. Albans v. Atchison, Topeka & Santa Fe Railway Company.* April 6, 1909. Refund of \$82.75 on shipment of hay from Virgil, Kans., to La Junta, Colo., on account of excessive rate.

5083. *Southern Lumber Company v. Chicago, Rock Island & Pacific Railway Company.* April 20, 1909. Refund of \$66.19 on carload of lumber from Warren, Ark., to Sioux City, Iowa, on account of misrouting.

5089. *Mitchell-Powers Hardware Company v. Virginia & Southwestern Railway Company et al.* June 1, 1909. Refund of \$3.90 on shipment of dynamite from Bristol, Va.-Tenn., to Johnson City, Tenn., on account of excessive rate.

5091. *Rumsey & Company v. Wisconsin Central Railway Company.* May 4, 1909. Refund of \$11.28 on carload of flaxseed from Manitowoc, Wis., to Chicago, Ill., on account of excessive rate.

5098. *Wichita Mill & Elevator Company v. Fort Worth & Denver City Railway Company et al.* May 29, 1909. Refund of \$668.97 on 3 carloads of oats from Richfield and Salina, Utah, to Wichita Falls, Tex., on account of excessive rate.

5104. *Springfield Paving Brick Company v. Illinois Central Railroad Company.* April 12, 1909. Refund of \$7.50 on 3 shipments of brick from Springfield, Ill., to Monroe, Wis., on account of excessive switching charge.

5108. *U. M. Slater (Incorporated) v. Southern Pacific Company.* June 9, 1909. Refund of \$157.50 on 3 carloads of hay from Sparks, Nev., to Stockyards, Cal., on account of excessive rate.

5128. *Butler Brothers v. Central Railroad Company of New Jersey.* April 30, 1909. Refund of \$8 on shipment of lamp chimneys from North Vernon, Ind., to Jersey City, N. J., on account of misrouting.

5129. *H. Altman v. Union Pacific Railroad Company.* May 27, 1909. Refund of \$320 on 6 carloads of oats from Schuyler and Fremont, Nebr., to Dale Creek, Wyo., on account of excessive rate.

5130. *Crucible Steel Company of America v. Central Railroad Company of New Jersey.* May 5, 1909. Refund of \$1.50 on shipment of bundles of steel from Jersey City, N. J., to Ithaca, N. Y., on account of misrouting.

5134. *Henry Wilhelm v. Delaware & Hudson Company.* April 7, 1909. Refund of \$2 on carload of excelsior from North Creek, N. Y., to Wilkes-Barre, Pa., on account of excessive rate.

5139. *American Hide & Leather Company v. Grand Trunk Railway System et al.* May 20, 1909. Refund of \$191.97 on 3 carloads of green hides from London, Ontario, to Ballston, N. Y., on account of excessive rate.

5140. *J. M. Marrow v. Baltimore & Ohio Southwestern Railroad Company.* June 1, 1909. Refund of \$90.64 on 11 carloads of cinders from Louisville, Ky., to Charlestown, Ind., on account of excessive rate.

5141. *A. W. Hesson & Company v. Southern Pacific Company.* April 16, 1909. Refund of \$126.36 on shipment of lime from Newcastle, Cal., to Elko, Nev., on account of excessive rate.

5147. *J. H. Turner v. Atchison, Topeka & Santa Fe Railway Company.* April 1, 1909. Refund of \$8.85 on shipment of hay from Virgil, Kans., to Rocky Ford, Colo., on account of excessive rate.

5148. *Missouri Pacific Railway Company v. Illinois Central Railroad Company.* May 11, 1909. Refund of \$4.33 on shipment of lumber from Memphis, Tenn., to St. Louis, Mo., on account of excessive switching charges.

5150. *Dealers' Fuel Company v. Nashville, Chattanooga & St. Louis Railway.* April 6, 1909. Refund of \$188.77 on 7 carloads of coke from Chattanooga, Tenn., to Nashville, Tenn., on account of excessive rate.

5151. *Gebhardt Chili Powder Company v. Illinois Central Railroad Company.* April 6, 1909. Refund of \$28.28 on carload of chili peppers from New Orleans, La., to St. Louis, Mo., on account of excessive rate.

5155. *Livingston Brothers v. Chicago, St. Paul, Minneapolis & Omaha Railway Company*. June 7, 1909. Refund of \$51.37 on 2 carloads of scrap iron from Sioux Falls, S. Dak., to Minneapolis, Minn., on account of excessive rate.

5157. *Theo. Hamm Brewing Company v. Chicago, St. Paul, Minneapolis & Omaha Railway Company*. April 9, 1909. Refund of \$60.23 on 4 carloads of grain from St. Paul, Minn., to Sioux City, Iowa, on account of excessive rate.

5160. *H. B. Hooker & Son v. New York, New Haven & Hartford Railroad Company*. April 20, 1909. Refund of \$7 on shipment of stone from Portland, Conn., to Rochester, N. Y., on account of misrouting.

5164. *Lamborn Brothers v. Atchison, Topeka & Santa Fe Railway Company*. May 22, 1909. Refund of \$73.46 on shipment of hay from Yates Center, Kans., to Lamar, Colo., on account of excessive rate.

5182. *Gulf Lumber Company v. Gulf, Colorado & Santa Fe Railway Company*. May 29, 1909. Refund of \$38.87 on shipment of sash and doors from St. Louis, Mo., to Cravens, La., on account of excessive rate.

5190. *W. T. Bradley v. Philadelphia & Reading Railway Company et al.* June 4, 1909. Refund of \$114.64 on 39 carloads of chemical lime from Palmyra and Swatara, Pa., to Newark, N. J., on account of excessive rate.

5193. *Bangor Granite Company v. Boston & Maine Railroad et al.* April 3, 1909. Refund of \$85.17 on shipment of granite from Milford, N. H., to Bangor, Me., on account of excessive rate.

5202. *Nye-Schneider-Fowler Company et al v. Union Pacific Railroad Company et al.* June 8, 1909. Refund of \$34.20 to Nye-Schneider-Fowler Company, and \$5.70 to D. W. Hotchkiss & Johnson, on 4 carloads of cement from Hannibal, Mo., to Fremont, Nebr., on account of excessive rate.

5211. *Kauffman, Davidson & Company v. San Pedro, Los Angeles & Salt Lake Railroad Company*. April 15, 1909. Refund of \$91.40 on shipment of hides, etc., from Eureka, Utah, to Los Angeles, Cal., on account of excessive rate.

5213. *E. M. Barton v. Oregon Railroad & Navigation Company et al.* June 7, 1909. Refund of \$120 on shipment of beer from Seattle, Wash., to Weiser, Idaho, on account of excessive rate.

5214. *R. J. Reynolds Tobacco Company v. Virginian Railway Company et al.* May 10, 1909. Refund of \$87.41 on 9 shipments of tobacco from Kenbridge, Va., to Winston-Salem, N. C., on account of excessive rate.

5215. *Columbia Plow Works v. New York Central & Hudson River Railroad Company et al.* June 7, 1909. Refund of \$6.39 on carload of scrap iron from Pittsfield, Mass., to Copake Iron Works, N. Y., on account of excessive rate.

5217. *Iler & Company v. Chicago, Burlington & Quincy Railroad Company*. April 20, 1909. Refund of \$9.18 on shipment of empty whisky barrels from Kansas City, Mo., to Omaha, Nebr., on account of excessive rate.

5219. *American Linseed Company v. Chicago, Burlington & Quincy Railroad Company*. April 6, 1909. Refund of \$9.30 on shipment of linseed meal from Minnesota Transfer, Minn., to St. Louis, Mo., on account of excessive rate.

5220. *Myles Salt Company v. Morgan's Louisiana & Texas Railroad & Steamship Company et al.* April 15, 1909. Refund of \$78.20 on 3 carloads of salt from Weeks Island, La., to Memphis, Tenn., on account of excessive rate.

5221. *J. S. Schofield's Sons & Company v. Central of Georgia Railway Company et al.* June 2, 1909. Refund of \$8.82 on shipment of machinery from Macon, Ga., to Tallahassee, Fla., on account of excessive rate.

5222. *The Nicola, Stone & Myers Company v. Illinois Central Railroad Company et al.* May 26, 1909. Refund of \$8.40 on shipment of lumber from Laurel, Miss., to Oil City, Pa., on account of excessive rate.

5224. *Smartt Stove Company v. Nashville, Chattanooga & St. Louis Railway*. April 26, 1909. Refund of \$35.37 on 2 shipments of stoves from Smartt, Tenn., to Cartersville, Ga., on account of excessive rate.

5228. *Italian-Swiss Colony v. Southern Pacific Company*. June 17, 1909. Refund of \$78.55 on 2 carloads of iron from Sharon, Pa., to Asti, Cal., on account of misrouting.

5230. *Penick & Ford v. Galveston, Harrisburg & San Antonio Railway Company et al.* June 5, 1909. Refund of \$116 on 2 carloads of molasses from Sugar Valley, Tex., to Shreveport, La., on account of excessive rate.

5229. *S. Mandel Junk Company v. Atchison, Topeka & Santa Fe Railway Company.* June 15, 1909. Refund of \$141.43 on shipment of scrap iron from Los Cerrillos, N. Mex., to Colorado Springs, Colo., on account of excessive rate.

5232. *C. W. Hull Company v. Union Pacific Railroad Company et al.* June 15, 1909. Refund of \$8.27 on shipment of coal from Sesser, Ill., to Blue Rapids, Kans., on account of excessive rate.

5246. *Sun Company v. Indianapolis Southern Railroad Company et al.* June 12, 1909. Refund of \$278.74 on 7 carloads of crude oil from Stay, Ill., to Grant Park, Ill., on account of excessive rate.

5247. *Ottumwa Box Car Loader Company v. Chicago, Rock Island & Pacific Railway Company.* June 11, 1909. Refund of \$35.72 on shipment of bridge iron from Ottumwa, Iowa, to Mobile, Ala., on account of misrouting.

5248. *N. T. Ritch, jr., v. Atlantic Coast Line Railroad Company.* May 4, 1909. Refund of \$263.91 on carload of strawberries from Raiford, Fla., to New York, N. Y., on account of excessive rate.

5254. *Frank Simpson Fruit Company v. Southern Pacific Company.* April 13, 1909. Refund of \$122.66 on shipment of potatoes from Clark, Nev., to Los Angeles, Cal., on account of excessive rate.

5257. *Fruit Growers Express v. Southern Pacific Company.* May 22, 1909. Collection waived of \$3,598.52 on 16 carloads of ice from Phoenix, Ariz., to Yuma, Ariz., on account of excessive rate.

5260. *C. J. Carter Lumber Company v. Chicago, Burlington & Quincy Railroad Company.* April 20, 1909. Refund of \$29.43 on shipment of lumber from Carter, Ark., to Hillsboro, Iowa, on account of erroneous destination.

5263. *S. Locke Breaux v. Morgan's Louisiana & Texas Railroad & Steamship Company et al.* May 26, 1909. Refund of \$13.82 on carload of rice from Port Arthur, Tex., to New Orleans, La., on account of excessive rate.

5264. *Southern Cotton Oil Company v. Morgan's Louisiana & Texas Railroad & Steamship Company.* May 6, 1909. Refund of \$534.86 on 2 carloads of cotton-seed oil from Granger, Tex., to Gretna, La., on account of excessive rate.

5265. *National Tube Company v. Atchison, Topeka & Santa Fe Railway Company.* June 17, 1909. Refund of \$69.48 on shipment of wrought-iron pipe from Pittsburg, Pa., to La Junta, Colo., on account of excessive rate.

5269. *Relief of Agent of Chicago, St. Paul, Minneapolis & Omaha Railway Company at Duluth, Minn.* June 21, 1909. Refund of \$249.81 on shipment of steam shovels from Marion, Ohio, to Duluth, Minn., on account of excessive rate.

5270. *Union Sugar Company v. Southern Pacific Company et al.* May 26, 1909. Refund of \$24.18 on shipment of sugar from Betteravia, Cal., to Wichita, Kans., on account of excessive rate.

5275. *Lewis McNutt v. Central Indiana Railway Company et al.* June 15, 1909. Refund of \$21.07 on carload of sewer pipe from Brazil, Ind., to Rock Falls, Ill., on account of excessive rate.

5306. *American Linseed Company v. Union Pacific Railroad Company.* May 29, 1909. Refund of \$17.20 on carload of linseed oil from Sioux City, Iowa, to Denver, Colo., on account of excessive rate.

5312. *The Mogg Coal Company v. Chicago & Eastern Illinois Railroad Company.* April 22, 1909. Refund of \$28.87 on shipment of coke from Evansville, Ind., to Chicago, Ill., on account of excessive rate.

5315. *Kavanagh & Lapidus v. Chicago & Eastern Illinois Railroad Company.* April 20, 1909. Refund of \$42.35 on 3 carloads of watermelons from Clarkton, Mo., to Chicago, Ill., on account of excessive rate.

5316. *Joseph Wild & Company v. Southern Pacific Company.* May 26, 1909. Refund of \$2.78 on shipment of matting from Hongkong, China, to Meridian, Miss., on account of misrouting.

5317. *T. D. Randall & Company v. Chicago & Eastern Illinois Railroad Company.* May 21, 1909. Refund of \$53.52 on 4 carloads of watermelons from various points in Missouri to Chicago, Ill., on account of excessive rate.

5318. *Marden, Orth & Hastings v. Norfolk & Western Railway Company.* April 7, 1909. Refund of \$64.80 on shipment of bark extract from Boston, Mass., to Elkton, Va., on account of excessive rate.

5321. *Col. Hall Railroad Shows v. Chicago & Eastern Illinois Railroad Company et al.* April 10, 1909. Collection waived of \$300 on 2 carloads of show outfit from Kiefer, Okla., to Chicago, Ill., on account of excessive rate.

5323. *Ball Brothers Glass Manufacturing Company v. Central Indiana Railway Company et al.* June 11, 1909. Refund of \$1.44 on carload of fruit jars from Muncie, Ind., to Milwaukee, Wis., on account of excessive rate.

5340. *Anti-Trust Oil Company v. Denver & Rio Grande Railroad Company et al.* June 11, 1909. Refund of \$8.58 on shipment of oil from Niotaze, Kans., to Denver, Colo., on account of excessive rate.

5344. *Madison Coal Corporation v. Illinois Central Railroad Company.* May 8, 1909. Refund of \$129.07 on 2 carloads of coal from Carterville, Ill., to Rowley and Ottosen, Iowa, on account of misrouting.

5345. *Jewett Brothers v. Great Northern Railway Company.* June 22, 1909. Refund of \$16.32 on shipment of canned goods from Superior Dock, Wis., to Aberdeen, S. Dak., on account of excessive rate.

5348. *George W. Tunsberg v. Illinois Central Railroad Company.* June 12, 1909. Refund of \$31.50 on shipment of box material from Greenfield, Tenn., to Summerdale, Ala., on account of misrouting.

5349. *Talge Mahogany Company v. Illinois Central Railroad Company.* April 21, 1909. Refund of \$27.20 on 34 carloads of mahogany logs from New Orleans, La., to Indianapolis, Ind., on account of nonallowance for stakes.

5353. *Beebe & Runyan Furniture Company v. Chicago & North Western Railway Company.* April 28, 1909. Refund of \$222.20 on 23 shipments of furniture from Kenosha, Appleton, and Sheboygan, Wis., to Omaha, Nebr., on account of excessive rate.

5365. *Lyon Brothers Company v. Erie Railroad Company et al.* June 8, 1909. Refund of \$458.43 on 38 carloads of cantaloupes from New Mexico points to New York, N. Y., on account of excessive rate.

5370. *Helmers Manufacturing Company v. Missouri Pacific Railway Company.* April 15, 1909. Refund of \$379.27 on shipment of furniture from Lansing, Kans., to Kansas City, Mo., on account of excessive rate.

5372. *B. F. Hoag v. San Pedro, Los Angeles & Salt Lake Railroad Company et al.* April 17, 1909. Refund of \$37.84 on carload of coal from Helper, Utah, to Narod, Cal., on account of excessive rate.

5375. *John Anderes & Company v. Chicago & Eastern Illinois Railroad Company.* June 21, 1909. Refund of \$59.51 on shipment of hollow brick from Brazil, Ind., to Wausau, Wis., on account of excessive rate.

5387. *W. W. Walker & Son v. Southern Pacific Company Lines in Oregon.* April 22, 1909. Refund of \$18.39 on shipment of peach seeds from Chico, Cal., to Salem, Oreg., on account of excessive rate.

5394. *Ingersoll-Rand Company v. Cumberland Valley Railroad Company.* May 28, 1909. Refund of \$0.75 on shipment of drill parts from Gary, W. Va., to Phillipsburg, N. J., on account of misrouting.

5401. *Roane Iron Company v. Southern Railway Company et al.* June 11, 1909. Refund of \$394.17 on 54 carloads of coke from Stonega, Va., to Rockwood, Tenn., on account of excessive rate.

5408. *Hunter Milling Company v. Chicago, Rock Island & Pacific Railway Company.* May 26, 1909. Refund of \$3.01 on shipment of flour and shorts from Renfrow, Okla., to Lakewood, Ill., on account of misrouting.

5410. *Macbeth-Evans Glass Company v. Boston & Albany Railroad Company et al.* May 18, 1909. Refund of \$14.42 on 2 shipments of glass sand from Cheshire, Mass., to Wagon Works, Ohio, on account of excessive rate.

5417. *Burke Tanning Company v. Southern Railway Company et al.* June 19, 1909. Refund of \$22.39 on 3 shipments of leather from Morganton, N. C., to Reading and Lock Haven, Pa., to Newton, N. J., on account of excessive rate.

5421. *Hambleton Leather Company v. Western Maryland Railroad Company.* May 19, 1909. Collection waived of \$31 on 5 carloads of extract from Canton, N. C., and Lynchburg, Va., to Hambleton, W. Va., on account of excessive demurrage charges.

5422. *Elkins Tanning Company v. Western Maryland Railroad Company.* May 19, 1909. Collection waived of \$60 on shipments of extract from Buena Vista and Basic City, Va., to Elkins, W. Va., on account of excessive demurrage charges.

5428. *Douglas Reduction Works v. El Paso & Southwestern Railroad Company et al.* May 11, 1909. Refund of \$584.91 on 2 shipments of pig iron from Birmingham, Ala., to Douglas, Ariz., on account of excessive rate.

5435. *J. C. Orrick & Son Company v. Baltimore & Ohio Railroad Company.* June 2, 1909. Refund of \$36 on 2 carloads of canned goods from Great Cacapon, W. Va., to Piedmont, W. Va., on account of excessive rate.

5439. *American Milling Company v. Illinois Central Railroad Company.* May 18, 1909. Refund of \$3 on shipment of mill feed from Acme, Ill., to Leonardsville, N. Y., on account of nonabsorption of switching charges.

5446. *White Lumber Company v. Chicago, Indianapolis & Louisville Railway Company.* May 26, 1909. Refund of \$9.26 on 5 carloads of lumber from Harrodsburg, Bloomington, and Gosport, Ind., to Chicago, Ill., on account of excessive rate.

5447. *Mack Manufacturing Company v. Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company et al.* May 20, 1909. Refund of \$316.21 on 27 carloads of paving brick from New Cumberland, W. Va., to Suspension Bridge, N. Y., on account of excessive rate.

5448. *Minneapolis Brewing Company v. Chicago & North Western Railway Company et al.* June 2, 1909. Refund of \$15.88 on shipment of beer from Minneapolis, Minn., to Deadwood, S. Dak., on account of excessive rate.

5450. *Oriental Textile Mills v. International & Great Northern Railroad Company et al.* May 28, 1909. Refund of \$101.64 on shipment of oil press cloth from Houston, Tex., to Memphis, Tenn., on account of excessive rate.

5455. *Nobles Brothers Grocery Company v. Pecos & Northern Texas Railway Company et al.* May 19, 1909. Refund of \$25.40 on shipment of sugar from New Orleans, La., to Plainview, Tex., on account of excessive rate.

5460. *Coates Brothers v. Texas & Pacific Railway Company et al.* May 19, 1909. Collection waived of \$736.02 on 19 carloads of cotton-seed cake from Vernon, Tex., to New Orleans, La., on account of excessive rate.

5463. *Gulf State Brick Company v. Morgan's Louisiana & Texas Railroad & Steamship Company et al.* June 28, 1909. Refund of \$104.96 on shipment of brick from Loeb, Tex., to Napoleonville, La., on account of excessive rate.

5467. *Hoopes Brothers & Darlington v. Atlantic Coast Line Railroad Company.* April 23, 1909. Refund of \$240.30 on shipment of wagon material from Brookville, Fla., to West Chester, Pa., on account of excessive rate.

5478. *H. D. Lee Mercantile Company v. Chicago, Rock Island & Pacific Railway Company.* May 6, 1909. Refund of \$15.25 on shipment of pickles from Omaha, Nebr., to Salina, Kans., on account of excessive rate.

5484. *M. Baker & Company v. Illinois Central Railroad Company.* May 4, 1909. Refund of \$83 on carload of tomatoes from Habana, Cuba, to Chicago, Ill., on account of excessive rate.

5485. *Phelps County Lumber Company v. Chicago, Burlington & Quincy Railroad Company.* April 21, 1909. Refund of \$70.72 on shipment of rubble from Lyons, Colo., to Loomis, Nebr., on account of excessive rate.

5488. *Century Mercantile Company v. Southern Pacific Company.* May 4, 1909. Refund of \$114.60 on 3 carloads of wool from Minden, Nev., to West Berkeley, Cal., on account of excessive rate.

5497. *Hawkeye Pearl Button Company v. Illinois Central Railroad Company et al.* May 6, 1909. Refund of \$70.28 on 2 shipments of mussel shells from Kuttawa, Ky., to Canton, Mo., on account of excessive rate.

5498. *Belmont Iron Works v. Pennsylvania Railroad Company.* June 10, 1909. Refund of \$70.73 on 7 carloads of bridge iron from Eddystone, Pa., to Weehawken, N. J., on account of excessive rate.

5506. *A. Boringstein v. Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company et al.* May 17, 1909. Refund of \$10 on shipment of scrap iron from Edinburg, Ind., to Chicago Heights, Ill., on account of excessive rate.

5507. *Works Biscuit Company v. Minneapolis, St. Paul & Sault Ste. Marie Railway Company et al.* May 17, 1909. Refund of \$36.75 on shipment of flour from Chicago, Ill., to Minneapolis, Minn., on account of excessive rate.

5510. *United States Packing Company v. Missouri, Kansas & Texas Railway Company.* May 15, 1909. Refund of \$12.55 on shipment of live poultry from Clinton, Mo., to Parsons, Kans., on account of excessive rate.

5523. *D. L. Shirk v. Southern Pacific Company*. April 17, 1909. Refund of \$56.44 on shipment of hay from Sparks, Nev., to West Berkeley, Cal., on account of excessive rate.

5531. *L. C. Sheldon v. Southern Pacific Company*. June 10, 1909. Refund of \$377.91 on 5 carloads of hay from Lovelock, Nev., to Oakland, Cal., on account of excessive rate.

5534. *The West Stockbridge Marble Works v. New York, New Haven & Hartford Railroad Company*. May 5, 1909. Refund of \$63.19 on 3 shipments of sand from Madison, Conn., to West Stockbridge, Mass., on account of excessive rate.

5535. *The White Marble & Terazzo Company v. New York, New Haven & Hartford Railroad Company*. June 29, 1909. Refund of \$523.85 on 26 carloads of sand from Madison, Conn., to Lee, Mass., on account of excessive rate.

5536. *M. J. Grove Lime Company v. Northern Central Railway Company*. May 6, 1909. Refund of \$8.10 on carload of land lime from Frederick, Md., to Hanover Junction, Pa., on account of excessive rate.

5538. *F. S. Murphy v. Southern Pacific Company*. April 24, 1909. Refund of \$62.70 on 2 carloads of lumber from Mohawk, Cal., to Ogden, Utah, on account of excessive rate.

5543. *Dorman & Smyth Hardware Company v. Pennsylvania Railroad Company et al.* June 7, 1909. Refund of \$19.08 on carload of nails from Williamsport, Pa., to Fulton, Md., on account of excessive rate.

5545. *Fargo Provision Market v. Northern Pacific Railway Company*. May 18, 1909. Refund of \$24.50 on carload of frozen fish from Oak Point, Manitoba, to Fargo, N. Dak., on account of excessive rate.

5546. *Emery Candle Company v. Cincinnati, Hamilton & Dayton Railway Company et al.* June 2, 1909. Refund of \$143.93 on shipment of oil from Ivorydale, Ohio, to Whiting, Ind., on account of excessive rate.

5547. *Emery Candle Company v. Cincinnati, Hamilton & Dayton Railway Company*. June 2, 1909. Refund of \$125.28 on shipment of oil from Ivorydale, Ohio, to Whiting, Ind., on account of excessive rate.

5549. *Eastern Torpedo Company v. St. Louis & San Francisco Railroad Company*. May 21, 1909. Refund of \$200.22 on shipment of acid from Buffalo, N. Y., to A. V. & W. Junction, Okla., on account of excessive rate.

5550. *Helmers Manufacturing Company v. Chicago, Rock Island & Pacific Railway Company et al.* April 22, 1909. Refund of \$9.14 on shipment of iron beds from Kenosha, Wis., to Kansas City, Mo., on account of excessive rate.

5554. *American Sheet & Tin Plate Company v. Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company*. June 11, 1909. Refund of \$13.70 on 3 carloads of tin plate from Elwood, Ind., to St. Charles, Ill., on account of excessive rate.

5556. *New River Grocery Company v. Norfolk & Western Railway Company*. May 25, 1909. Refund of \$36.40 on shipment of canned tomatoes from Roanoke, Va., to Hinton, W. Va., on account of excessive rate.

5566. *Armour & Company v. Chicago, Burlington & Quincy Railroad Company*. May 5, 1909. Refund of \$103.22 on 10 carloads of tin-can stock from Kansas City, Mo., to South Omaha, Nebr., on account of excessive rate.

5567. *Cambridge Ice Company v. Boston & Maine Railroad*. June 9, 1909. Refund of \$1,609.81 on 57 carloads of ice from Brookline, N. H., to Cambridge, Mass., on account of excessive rate.

5570. *W. D. Byron & Sons (Incorporated) v. Cumberland Valley Railroad Company et al.* June 15, 1909. Refund of \$64.20 on 8 carloads of stick bark from Tablers, W. Va., to Williamsport, Md., on account of excessive rate.

5571. *W. Patton v. Atlantic Coast Line Railroad Company*. June 9, 1909. Refund of \$18.86 on shipment of potatoes from Calypso, N. C., to Little Falls, N. Y., on account of excessive rate.

5572. *Jno. Scott & Sons v. Atchison, Topeka & Santa Fe Railway Company et al.* June 18, 1909. Refund of \$1,039.85 on shipment of grader's outfit from Hillview, Ill., to Temple, Tex., on account of excessive rate.

5579. *Thatcher Implement & Mercantile Company v. Gila Valley, Globe & Northern Railway Company et al.* June 10, 1909. Refund of \$21.84 on carload of hay from Solomon, Ariz., to Guaymas, Mexico, on account of excessive rate.

5582. *DeLong Brothers v. Norfolk & Western Railway Company.* May 17, 1909. Refund of \$28.80 on shipment of leather from Wittens Mill, Va., to Philadelphia, Pa., on account of excessive rate.

5585. *Frank Souza v. Southern Pacific Company.* May 10, 1909. Refund of \$137.85 on 3 shipments of sweet potatoes from Buhach and Turlock, Cal., to Ogden, Utah, on account of excessive rate.

5586. *L. W. Eversman v. Union Pacific Railroad Company.* May 18, 1909. Refund of \$157.50 on 3 carloads of potatoes from Ovid, Colo., to Kansas City, Mo., on account of excessive rate.

5587. *Ira W. Hauck v. Cumberland Valley Railroad Company.* May 17, 1909. Refund of \$16.80 on shipment of cordwood from Falling Waters, W. Va., to Maugansville, Md., on account of excessive rate.

5589. *G. W. Carty v. Union Pacific Railroad Company et al.* June 4, 1909. Refund of \$22.69 on carload of coal from Coalville, Utah, to Winnemucca, Nev., on account of excessive rate.

5591. *John Wahl Commission Company v. Missouri, Kansas & Texas Railway Company et al.* June 4, 1909. Refund of \$74.90 on shipment of lead from Galena, Kans., to Atlanta, Ga., on account of excessive rate.

5593. *W. D. Gully v. St. Louis & San Francisco Railroad Company et al.* June 16, 1909. Refund of \$40.80 on shipment of hay from Altus, Okla., to Quanah, Tex., on account of excessive rate.

5601. *Frank Samuel v. Philadelphia, Baltimore & Washington Railroad Company et al.* June 28, 1909. Refund of \$24.88 on 3 carloads of scrap iron from Principio, Md., to Harrisburg, Pa., on account of excessive rate.

5602. *Beaver Sand Company v. Pennsylvania Company et al.* June 2, 1909. Refund of \$320.08 on 10 carloads of sand from Beaver, Pa., to Negley, Ohio, on account of excessive rate.

5613. *Carnegie Steel Company v. West Side Belt Railroad Company et al.* May 22, 1909. Refund of \$4.14 on shipment of angles from Clairton, Pa., to Mingo Junction, Ohio, on account of excessive rate.

5614. *O. A. Cooper & Son v. Chicago, Burlington & Quincy Railroad Company.* May 28, 1909. Refund of \$28.20 on 2 carloads of flour and feed from Humboldt, Nebr., to Atwood, Kans., on account of excessive rate.

5620. *Gibson Fruit Company v. Chicago, Rock Island & Pacific Railway Company et al.* May 4, 1909. Refund of \$70.88 on shipment of peaches from Magazine, Ark., to Chicago, Ill., on account of excessive rate.

5626. *Sterling Manufacturing Company v. Chicago, Burlington & Quincy Railroad Company et al.* May 19, 1909. Refund of \$7.17 on carload of agricultural implements from Rock Falls, Ill., to Owasso, Mich., on account of excessive rate.

5631. *T. D. Randall & Company v. Chicago & Eastern Illinois Railroad Company et al.* May 19, 1909. Refund of \$53.71 on 4 carloads of watermelons from White Oak, Mo., to Chicago, Ill., on account of excessive rate.

5634. *Noonan Meat Company v. Southern Pacific Company.* June 26, 1909. Refund of \$128.40 on 2 shipments of hay from Brown, Nev., to Santa Rosa, Cal., on account of excessive rate.

5637. *Itasca Elevator Company v. Chicago, St. Paul, Minneapolis & Omaha Railway Company.* June 9, 1909. Refund of \$3,145.99 on 3,425 carloads of grain from connecting lines, Superior, Wis., to Itasca elevator, on account of excessive switching charges.

5639. *McCaull-Webster Elevator Company v. Chicago, St. Paul, Minneapolis & Omaha Railway Company.* May 18, 1909. Refund of \$12.10 on 2 carloads of coal from Milwaukee, Wis., to Millers Siding, Nebr., on account of excessive rate.

5645. *Southern Cotton Oil Company v. Southern Railway Company.* May 28, 1909. Refund of \$43.43 on 6 carloads of cotton-seed oil from Charleston, S. C., to Savannah, Ga., on account of excessive rate.

5648. *John R. Young v. Southern Railway Company.* May 21, 1909. Refund of \$14.73 on shipment of rosin from Tillman, S. C., to Savannah, Ga., on account of excessive rate.

5654. *Hickson Lumber Company v. Norfolk & Western Railway Company.* May 28, 1909. Refund of \$23.49 on shipment of lumber from Brookneal, Va., to Harrisburg, Pa., on account of excessive rate.

5657. *Marblehead Lime Company v. St. Louis & San Francisco Railroad Company et al.* May 22, 1909. Refund of \$120 on shipment of lime from Springfield, Mo., to Raton, N. Mex., on account of excessive rate.

5662. *Cames & Casalet v. Southern Pacific Company.* June 11, 1909. Refund of \$395.52 on 7 shipments of hay from Brown, Nev., to Stockyards, Cal., on account of excessive rate.

5668. *F. Cames & Company v. Southern Pacific Company.* May 15, 1909. Refund of \$422.27 on 7 carloads of hay from Brown, Nev., to Stockyards, Cal., on account of excessive rate.

5672. *Hickson Lumber Company v. Norfolk & Western Railway Company et al.* April 27, 1909. Refund of \$58.60 on 2 carloads of lumber from Brookneal, Va., to Harrisburg, Pa., on account of excessive rate.

5674. *Bobet Brothers v. Morgan's Louisiana & Texas Railroad & Steamship Company et al.* June 19, 1909. Refund of \$74.48 on carload of stoves from Hanson, Tex., to New Orleans, La., on account of excessive rate.

5681. *Farrel Foundry & Machine Company v. New York, New Haven & Hartford Railroad Company.* May 20, 1909. Refund of \$192.21 on 9 carloads of sugar-mill machinery from Ansonia, Conn., to Harlem River, N. Y., on account of excessive rate.

5684. *Jamieson House Furnishing Company v. Northern Pacific Railway Company et al.* May 22, 1909. Refund of \$98.80 on shipment of chairs from Superior, Wis., to Trinidad, Colo., on account of excessive rate.

5686. *Wright, Barrett & Stilwell Company v. Northern Pacific Railway Company.* June 5, 1909. Refund of \$178.70 on shipment of toilet paper and paper bags from St. Paul, Minn., to Helena, Mont., on account of excessive rate.

5687. *S. B. Dobbs v. West Jersey & Seashore Railroad Company et al.* June 1, 1909. Refund of \$22.52 on 5 carloads of brick from Mays Landing, N. J., to Philadelphia, Pa., on account of excessive rate.

5689. *Pennsylvania Iron Company v. Pennsylvania Railroad Company et al.* May 15, 1909. Refund of \$14.07 on shipment of scrap iron from Woodberry, Md., to Lancaster, Pa., on account of excessive rate.

5690. *John Diffon v. Northern Pacific Railway Company.* June 19, 1909. Refund of \$97.37 on 7 carloads of gravel from Barnum, Minn., to Superior, Wis., on account of excessive rate.

5692. *Imperial Brokerage Company v. Galveston, Harrisburg & San Antonio Railway Company.* June 5, 1909. Refund of \$36.88 on 2 carloads of rice hulls from Bay City, Tex., to Little Rock, Ark., on account of excessive rate.

5701. *Sheffield King Milling Company et al. v. Anchor Line.* June 26, 1909. Refund of \$11.51 on shipment of flour from Faribault, Minn., to Pottsville, Pa., on account of excessive rate.

5716. *Vogeler Seed & Produce Company v. Oregon Short Line Railroad Company et al.* June 28, 1909. Refund of \$100 on shipment of oats from Dillon, Mont., to Moapa, Nev., on account of excessive rate.

5721. *David Kaufman & Sons Company v. Central Railroad Company of New Jersey.* May 27, 1909. Refund of \$10.25 on shipment of scrap iron from Elizabethport, N. J., to Lancaster, Pa., on account of misrouting.

5722. *M. King v. Chicago & North Western Railway Company.* June 1, 1909. Refund of \$15.72 on shipments of oats from Yankton, S. Dak., to Milwaukee, Wis., on account of excessive minimum carload weight.

5727. *A. F. Phelps v. Chicago Great Western Railway Company et al.* June 1, 1909. Refund of \$19.80 on shipment of potatoes from Glyndon, Minn., to Leavenworth, Kans., on account of excessive rate.

5730. *McLean & Jorgenson v. Chicago, St. Paul, Minneapolis & Omaha Railway Company.* June 1, 1909. Refund of \$17.30 on shipment of fuel wood from Spring Valley, Wis., to Fairmont, Minn., on account of excessive rate.

5731. *Frank Carter Company v. Chicago, St. Paul, Minneapolis & Omaha Railway Company.* June 1, 1909. Refund of \$17.61 on shipment of fuel wood from Knapp, Wis., to Amboy, Minn., on account of excessive rate.

5735. *Hall, Wedge & Carter v. Chicago & Eastern Illinois Railroad Company.* May 26, 1909. Refund of \$12.50 on shipment of melons from Clarkton, Mo., to Chicago, Ill., on account of excessive rate.

5738. *Finkbine Lumber Company v. Illinois Central Railroad Company*. June 10, 1909. Refund of \$47.13 on shipment of lumber from Wiggins, Miss., to St. Charles, Mo., on account of excessive rate.

5746. *William J. Starr v. Chicago, St. Paul, Minneapolis & Omaha Railway Company*. June 1, 1909. Refund of \$36.89 on shipment of wood from Weston, Wis., to Mitchell, S. Dak., on account of excessive rate.

5751. *Hauser & Sons Malting Company v. Chicago Great Western Railway Company*. June 1, 1909. Refund of \$20.35 on shipment of malt from St. Paul, Minn., to Kansas City, Mo., on account of excessive rate.

5754. *Ostrander Fire Brick Company v. Lehigh Valley Railroad Company et al.* May 28, 1909. Refund of \$21.60 on shipment of sand from Ostrander, N. J., to Saratoga, N. Y., on account of excessive rate.

5755. *Ingersoll & Esler v. Southern Pacific Company*. June 23, 1909. Refund of \$37.50 on 2 shipments of beer from St. Louis, Mo., to San Bernardino, Cal., on account of excessive rate.

5757. *C. O. Stotts v. Atchison, Topeka & Santa Fe Railway Company*. June 28, 1909. Refund of \$87 on shipment of hay from Yates Center, Kans., to Las Animas, Colo., on account of excessive rate.

5765. *Kauffman, Davidson & Company v. Tonopah & Goldfield Railroad Company et al.* May 25, 1909. Refund of \$19.35 on shipment of hides from Tonopah, Nev., to Los Angeles, Cal., on account of excessive rate.

5767. *W. M. Murray v. Southern Pacific Company et al.* June 11, 1909. Refund of \$86 on shipment of horses from Emery, Cal., to El Paso, Tex., on account of excessive rate.

5768. *Tennessee Coal, Iron & Railroad Company v. Louisville & Nashville Railroad Company*. June 17, 1909. Refund of \$1,500.03 on 26 carloads of pig iron from Bessemer, Ala., to Pensacola, Fla., on account of excessive rate.

5769. *Tennessee Coal, Iron & Railroad Company v. Louisville & Nashville Railroad Company*. April 27, 1909. Refund of \$1,280.01 on shipments of iron from Ensley, Ala., to New Orleans, La., on account of excessive rate.

5771. *George B. Patterson v. Lehigh Valley Railroad Company and Erie Railroad Company*. June 18, 1909. Refund of \$32.44 on 2 shipments of flour and feed from Burdett, N. Y., to Thompson, Pa., on account of excessive rate.

5776. *W. W. Atterbury v. Pennsylvania Railroad Company*. May 27, 1909. Refund of \$50.44 on carload of sand from Riverside, N. J., to Radnor, Pa., on account of excessive rate.

5783. *Chicago, Burlington & Quincy Railroad Company v. Colorado Fuel & Iron Company*. April 24, 1909. Additional collection of \$804.26 on 3 carloads of steel rails from Minnequa, Colo., to Alger and Dietz, Wyo., on account of error in tariff rate.

5787. *Lyon Cypress Lumber Company v. Yazoo & Mississippi Valley Railroad Company*. June 2, 1909. Refund of \$5.43 on shipment of lumber from Garyville, La., to Robinson, Ill., on account of excessive rate.

5792. *R. A. Stephenson v. Atchison, Topeka & Santa Fe Railway Company*. June 11, 1909. Refund of \$110 on shipment of apples from Saffordville, Kans., to Las Animas, Colo., on account of excessive rate.

5797. *Elmore Lumber Company v. Chicago, St. Paul, Minneapolis & Omaha Railway Company*. June 10, 1909. Collection waived of \$16 on shipment of wood from Weston, Wis., to Elmore, Minn., on account of excessive rate.

5799. *Freeman & Wiley v. Southern Pacific Company Lines in Oregon, et al.* May 29, 1909. Refund of \$244 on shipment of vehicles from St. Paul, Minn., to Central Point, Oreg., on account of two cars furnished instead of one.

5800. *William Kelly Milling Company v. Atchison, Topeka & Santa Fe Railway Company*. May 22, 1909. Refund of \$15.16 on shipment of flour from Hutchinson, Kans., to Rocky Ford, Colo., on account of excessive rate.

5801. *A. H. Evers v. Atchison, Topeka & Santa Fe Railway Company*. May 28, 1909. Refund of \$6.13 on 2 shipments of apples from Peabody, Kans., to La Junta, Colo., on account of excessive rate.

5802. *Diamond Match Company v. Chicago & North Western Railway Company et al.* June 2, 1909. Refund of \$7.99 on shipment of matches from Oshkosh, Wis., to Rock Island, Ill., on account of excessive rate.

5803. *L. Harding & Sons v. Missouri Pacific Railway Company*. June 18, 1909. Refund of \$33.45 on 2 shipments of scrap iron from Omaha, Nebr., to Atchison, Kans., on account of excessive rate.

5805. *Whosoever Gospel Mission & Rescue Home Association v. Pennsylvania Railroad Company et al.* June 5, 1909. Refund of \$16.53 on shipment of cord wood from Laurel, Del., to Philadelphia, Pa., on account of excessive rate.

5809. *St. Louis Victoria Flour Mills v. Illinois Central Railroad Company*. June 19, 1909. Refund of \$1.50 on shipment of wheat from East St. Louis, Ill., to Nashville, Tenn., on account of nonallowance for grain doors.

5813. *John A. Miller v. Norfolk & Western Railway Company*. June 11, 1909. Refund of \$45.45 on shipment of wheat from Oakville, Pa., to Chilhowie, Va., on account of excessive rate.

5814. *Terminal Elevator Company v. Illinois Central Railroad Company*. June 21, 1909. Refund of \$2 on shipment of corn from East St. Louis, Ill., to Nashville, Tenn., on account of nonallowance for grain doors.

5819. *Advance Elevator & Warehouse Company v. Illinois Central Railroad Company*. June 21, 1909. Refund of \$4 on 2 shipments of wheat from East St. Louis, Ill., to Nashville, Tenn., on account of nonallowance for grain doors.

5822. *Pearl River Lumber Company v. Illinois Central Railroad Company*. June 11, 1909. Refund of \$13.68 on shipment of lumber from Brookhaven, Miss., to Nashville, Tenn., on account of misrouting.

5824. *Dan River Cotton Mills v. Atlantic Coast Line Railroad Company*. May 25, 1909. Refund of \$82.22 on 2 shipments of cotton from Mayesville, S. C., to Danville, Va., on account of excessive rate.

5833. *Yunker Brothers v. Chicago, Rock Island & Pacific Railway Company*. June 15, 1909. Refund of \$13.22 on 69 shipments of notions from various points to Des Moines, Iowa, on account of excessive rate.

5834. *H. C. Pally v. Chicago, Burlington & Quincy Railroad Company*. May 28, 1909. Refund of \$31.61 on shipment of household goods from Lincoln, Nebr., to Parkman, Wyo., on account of excessive rate.

5845. *W. T. Joyce Company v. Chicago, St. Paul, Minneapolis & Omaha Railway Company*. June 19, 1909. Refund of \$27.67 on shipment of maple wood from Le Sueur, Minn., to Rock Rapids, Iowa, on account of excessive rate.

5847. *Mount Nebo Oil Company v. San Pedro, Los Angeles & Salt Lake Railroad Company*. June 17, 1909. Refund of \$243.27 on shipment of wrought-iron pipe from Los Angeles, Cal., to Juab, Utah, on account of excessive rate.

5848. *A. M. Hays v. Atchison, Topeka & Santa Fe Railway Company*. June 2, 1909. Refund of \$6.03 on 2 shipments of household goods from Wichita, Kans., to La Junta, Colo., on account of excessive rate.

5854. *American Sheet & Tin Plate Company v. Baltimore & Ohio Railroad Company et al.* June 1, 1909. Refund of \$13.07 on 2 shipments of sheet bars from New Castle, Pa., to Dresden, Ohio, on account of excessive rate.

5855. *Colburn Brothers v. Atchison, Topeka & Santa Fe Railway Company*. June 1, 1909. Refund of \$15.02 on shipment of flour, etc., from McPherson, Kans., to Manzanola, Colo., on account of excessive rate.

5856. *Bell-D # Combination Company v. Louisville & Nashville Railroad Company*. June 17, 1909. Refund of \$16 on carload of baled hay from Woodlawn, Ill., to Nashville, Tenn., on account of excessive rate.

5859. *J. E. Baker v. Cumberland Valley Railroad Company et al.* June 19, 1909. Refund of \$24.05 on 3 shipments of fluxing stone from Bunker Hill, W. Va., to Folsom, W. Va., on account of excessive rate.

5865. *Greenwood Grocery Company v. Yazoo & Mississippi Valley Railroad Company et al.* June 25, 1909. Refund of \$1.23 on shipment of rice from Beaumont, Tex., to Greenwood, Miss., on account of excessive rate.

5867. *Batts Lumber Company v. Central of Georgia Railway Company*. June 26, 1909. Refund of \$500 on 208 carloads of lumber from various points to Columbus, Ga., on account of excessive rate.

5871. *Savannah Lumber Company v. Atlantic Coast Line Railroad Company et al.* June 1, 1909. Refund of \$42.79 on shipment of building material from Savannah, Ga., to Bristol, Tenn., on account of excessive rate.

5880. *Armour & Company v. Pennsylvania Company*. June 15, 1909. Refund of \$3 on shipment of fertilizer from Chicago, Ill., to Springboro, Pa., on account of misrouting.

5884. *H. J. Seibel, jr., v. Southern Railway Company et al.* June 1, 1909. Refund of \$3,148.42 on 40 carloads of iron ore from Happy Creek, Va., to Harrisburg, Pa., on account of excessive rate.

5893. *E. D. Gould v. Chicago, Burlington & Quincy Railroad Company*. June 15, 1909. Refund of \$219.75 on shipment of discard molasses from Fort Collins, Colo., to Cushing, Nebr., on account of excessive rate.

5897. *E. Griswold v. Southern Pacific Company et al.* June 11, 1909. Refund of \$112.55 on shipment of coke from Salt Lake City, Utah, to Mirage, Nev., on account of excessive rate.

5907. *Los Angeles Brewing Company v. Southern Pacific Company et al.* June 11, 1909. Refund of \$397.36 on 4 shipments of empty beer kegs from Douglas, Ariz., to Los Angeles, Cal., on account of excessive rate.

5908. *Norton Iron Works v. Norfolk & Western Railway Company*. June 11, 1909. Refund of \$6.08 on shipment of nails and wire from Ashland, Ky., to Hickory, N. C., on account of excessive rate.

5909. *S. Samuels & Company v. Houston East & West Texas Railway Company et al.* June 17, 1909. Refund of \$26.49 on shipment of cotton linters from Shreveport, La., to Houston, Tex., on account of excessive rate.

5940. *Barnard & Bunker v. Southern Pacific Company*. June 9, 1909. Refund of \$520.14 on 6 shipments of barley from Port Costa, Cal., to Reno, Nev., on account of excessive rate.

5946. *Great Western Cereal Company v. Baltimore & Ohio Railroad Company*. June 11, 1909. Refund of \$12 on carload of corn meal from East Akron, Ohio, to Boston, Mass., on account of misrouting.

5949. *Weiner Lumber Company v. Elgin, Joliet & Eastern Railway Company*. June 28, 1909. Refund of \$39.72 on 2 shipments of logs from Dyer, Ill., to Joliet, Ill., on account of excessive rate.

5951. *Hobbs & Knight v. Atlantic Coast Line Railroad Company*. June 23, 1909. Refund of \$41.16 on shipment of farm wagons from Wilson, N. C., to Tampa, Fla., on account of excessive rate.

5953. *C. B. Detweiler v. Atchison, Topeka & Santa Fe Railway Company*. June 17, 1909. Refund of \$7.50 on shipment of apples from Newton, Kans., to La Junta, Colo., on account of excessive rate.

5954. *Warner Fence Company v. Atchison, Topeka & Santa Fe Railway Company*. June 17, 1909. Refund of \$29.25 on shipment of wire fence from Ottawa, Kans., to Fowler, Colo., on account of excessive rate.

5960. *Sanford Richards v. Chicago, Burlington & Quincy Railroad Company*. May 15, 1909. Refund of \$7.94 on 2 shipments of rye and oats from Orleans, Nebr., to Kansas City, Mo., on account of excessive rate.

5963. *Lebow & Company v. Baltimore & Ohio Railroad Company*. June 15, 1909. Refund of \$20 on shipment of scrap iron from Monongah, W. Va., to Bellaire, Ohio, on account of excessive rate.

5980. *Alabama Grocery Company v. Nashville, Chattanooga & St. Louis Railway Company*. June 23, 1909. Refund of \$12, and collection waived of \$18, on shipment of potatoes from Columbia, Tenn., to Huntsville, Ala., on account of excessive rate.

5984. *The Carey Commission Company v. Atchison, Topeka & Santa Fe Railway Company*. June 16, 1909. Refund of \$49.20 on shipment of grapes from Joliet, Ill., to Independence, Kans., on account of excessive rate.

5992. *J. F. Anderson Lumber Company v. Chicago, St. Paul, Minneapolis & Omaha Railway Company*. June 11, 1909. Refund of \$40.96 on shipment of wood from Spring Valley, Wis., to Mitchell, S. Dak., on account of excessive rate.

6005. *Kingman Milling Company v. Atchison, Topeka & Santa Fe Railway Company*. June 26, 1909. Refund of \$60 on shipment of flour from Kingman, Kans., to Rocky Ford, Colo., on account of excessive rate.

6020. *Duluth Log Company v. Northern Pacific Railway Company*. June 25, 1909. Refund of \$1.20 on shipment of cedar poles from Blueberry, Wis., to Hamlin, Iowa, on account of nonallowance for stakes.

6031. *Bemis Omaha Bag Company v. Southern Railway Company et al.* June 1, 1909. Refund of \$3.10 on 3 shipments of cotton shoddy lining from Philadelphia, Pa., to Omaha, Nebr., on account of excessive rate.

6048. *Owen Brothers v. Southern Pacific Company et al.* June 17, 1909. Refund of \$72.15 on shipment of sweet potatoes from Turlock, Cal., to Salt Lake City, Utah, on account of excessive rate.

6069. *Cox-Hall Commission Company v. Atchison, Topeka & Santa Fe Railway Company.* June 26, 1909. Refund of \$11.80 on 2 carloads of live stock from El Paso, Tex., to Las Cruces, N. Mex., on account of excessive rate.

6077. *National Candy Company v. Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company.* June 18, 1909. Refund of \$0.50 on shipment of candy from Indianapolis, Ind., to Cincinnati, Ohio, on account of misrouting.

6079. *Acme Cement Plaster Company v. St. Louis & San Francisco Railroad Company et al.* June 28, 1909. Refund of \$9.90 on shipment of cement plaster from Marlow, Okla., to Old Orchard, Mo., on account of excessive rate.

6088. *C. A. Smurthwaite Produce Company v. San Pedro, Los Angeles & Salt Lake Railroad Company et al.* June 22, 1909. Refund of \$7.31 on shipment of barley from Fielding, Utah, to Ontario, Cal., on account of excessive rate.

6093. *A. Milton Robinson v. Southern Pacific Company et al.* June 23, 1909. Refund of \$111.76 on 2 carloads of calves from Cambray, N. Mex., to El Paso, Tex., on account of excessive rate.

6117. *Louis Kowalski v. Morgan's Louisiana & Texas Railroad & Steamship Company et al.* June 28, 1909. Refund of \$33 on carload of bones from Brownsville, Tex., to New Orleans, La., on account of excessive rate.

6119. *The Simon Cook Company v. Illinois Central Railroad Company et al.* June 26, 1909. Refund of \$10.83 on shipment of scrap iron from Champaign, Ill., to Michigan City, Ind., on account of excessive rate.

6121. *Gulf Refining Company of Louisiana v. Texarkana & Fort Smith Railway Company et al.* June 22, 1909. Refund of \$178.55 on 5 carloads of oil-well supplies from Beaumont, Tex., to Mooringsport, La., on account of excessive rate.

6166. *Frank Mitchell v. Missouri, Kansas & Texas Railway Company.* June 28, 1909. Refund of \$32.02 on shipment of cattle from Clearview, Okla., to National Stock Yards, Ill., on account of excessive rate.

6175. *R. W. Dockstader v. Missouri Pacific Railway Company.* June 26, 1909. Refund of \$16.80 on 14 carloads of grain from Cawker, Kans., to Kansas City and St. Joseph, Mo., on account of nonallowance for grain doors.

6187. *L. H. Oliver v. Eastern Railway of New Mexico System.* June 28, 1909. Refund of \$32 on shipment of sand from River Stockyards, N. Mex., to Portales, N. Mex., on account of excessive rate.

6294. *Detroit Chemical Works v. Northern Central Railway Company.* June 28, 1909. Refund of \$59.27 on 50 carloads of imported pyrites from Baltimore, Md., to Detroit, Mich., on account of excessive rate.

6326. *Stewart & Welch v. Northern Pacific Railway Company et al.* June 19, 1909. Refund of \$29.99 on shipment of sugar from San Francisco, Cal., to Taft, Mont., on account of excessive rate.

6327. *E. E. Lowe Company v. Georgia Southern & Florida Railway Company.* June 26, 1909. Refund of \$7.60 on carload of shingles from Lake City, Fla., to Summerville, Ga., on account of excessive rate.

6405. *Mr. J. B. Bostick v. Atlantic Coast Line Railroad Company et al.* June 29, 1909. Refund of \$25.33 on shipment of watermelons from Ridgeland, S. C., to Waynesboro, Pa., on account of excessive rate.

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ABSORPTION.

Where carrier absorbs charges on carload shipments and furnishes two cars, under rule making rate same as on one car, switching charge should be absorbed on both cars. *Milwaukee Falls Chair Co. v. C. M. & St. P. Ry. Co.* 217 (218).

ACCIDENT.

Accidents occur where all passengers are deprived of accommodations usually accorded them, but that fact could not be foundation for finding of unjust discrimination. *Cozart v. So. Ry. Co.* 226 (231).

ACCRUAL OF CAUSE OF ACTION. See **LIMITATION.**

ADJUSTMENT.

Matter left for adjustment by carriers in accordance with views expressed. *Ozark Fruit Growers Asso. v. St. L. & S. F. R. R. Co.* 134 (141).

ADVANCE.

Where long-established rate is raised for short period and then voluntarily reduced to former point presumption is that advanced rate is unreasonable, but presumption may be overcome by proof to the contrary. *Sunderland Bros. Co. v. P. M. R. R. Co.* 450 (451).

Fact that advance was result of conference and understanding between carriers is entitled to be duly considered, but this fact of itself does not of necessity establish unreasonableness of such rates. *Chicago Lumber & Coal Co. v. Tioga Southeastern Ry. Co.* 323.

Where plant has been established and money invested on faith of certain rates and conditions carrier may not increase those rates to serious disadvantage of such investment *without good cause or reason*. *Douglas & Co. v. C. R. I. & P. Ry. Co.* 232 (237).

Class rate applied, and reparation awarded on basis of former, and subsequently reestablished, lower commodity proportional rate. *Tyler Commission Co. v. C. M. & St. P. Ry. Co.* 490.

Resulting from cancellation of long-and-short-haul provision in tariff, corrected by specific rate; reparation awarded on shipments made. *Thomas v. C. M. & St. P. Ry. Co.* 364.

Cancellation of proportional commodity rates, resulting in application of higher class rates. *Kansas City Hay Co. v. C. M. & St. P. Ry. Co.* 100.

On account of nonappearance of defendants, and in absence of any showing tending to justify, presumed unreasonable. *Sunderland Bros. Co. v. P. M. R. R. Co.* 450 (451).

Hay, Kansas City, Mo., to Seymour, Iowa, cancellation of commodity rate, higher class rate applied. *Arkansas Fuel Co. v. C. M. & St. P. Ry. Co.* 95.

Transit privileges long granted; subsequently denied, resulting in great advance in total rate. *Douglas & Co. v. C. R. I. & P. Ry. Co.* 232 (233).

ADVANCE—Continued.

Chairs, Grafton, Wis., to Chicago; voluntary reduction, reparation awarded.

Milwaukee Falls Chair Co. *v.* C. M. & St. P. Ry. Co. 217.

Yellow pine lumber, Arkansas and northern Louisiana to C. F. A. territory. Chicago Lumber & Coal Co. *v.* Tioga Southeastern Ry. Co. 323.

Bananas, New Orleans and Mobile to Iowa points, not unreasonable. Lagomarcino-Grupe Co. *v.* Ill. Cent. R. R. Co. 151.

Wire and nails, Cincinnati territory to Arkansas points not justified. Indiana Steel & Wire Co. *v.* C. R. I. & P. Ry. Co. 155.

Malt, Chilton, Wis., to Kansas City, Mo., found unreasonable. Chilton Malting Co. *v.* C. M. & St. P. Ry. Co. 10.

Lumber, Kalispell District to points on Pembina-Port Arthur line. Kalispell Lumber Co. *v.* G. N. Ry. Co. 164.

Fertilizer, Shreveport, La., to Arkansas points, condemned. Virginia-Carolina Chemical Co. *v.* St. L. S. W. Ry. Co. 49.

Resulting from cancellation of through routes and joint rates. Delray Salt Co. *v.* C. St. P. M. & O. Ry. Co. 507.

ADVANTAGE. See also **DISCRIMINATION**; **LOCATION**.

Chicago has not only advantage of more intense railroad competition, but is much shorter distance and enjoys natural advantages of location over Indianapolis in reaching St. Paul and Winona. Indianapolis Freight Bureau *v.* C. C. C. & St. L. Ry. Co. 276 (282).

Commission can not order reduction in rates to enable certain factories to overcome natural advantages enjoyed by competitive producing points. Virginia-Carolina Chemical Co. *v.* St. L. S. W. Ry. Co. 49 (52).

A carrier is to take into account in making rates, amongst others, questions of distance and occasionally natural advantages. Avery Manufacturing Co. *v.* A. T. & S. F. Ry. Co. 20 (24).

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Shipper can not defeat application of joint through rate by constituting carrier its agent to collect charges to junction and reship to destination. Stock Yards Cotton & Linseed Meal Co. *v.* C. M. & St. P. Ry. Co. 366 (367).

Notice to, is notice to his principal. California Commercial Assn. *v.* Wells Fargo & Co. 458 (463).

AGREED VALUATION. See **RELEASED RATES**.**AGRICULTURAL IMPLEMENTS.** See **COMMODITIES**.**AGRICULTURAL MACHINERY.** See **COMMODITIES**.**ALFALFA HAY.** See **COMMODITIES**.**ALLOWANCES TO ELEVATORS.** See **ELEVATOR ALLOWANCES**.**ALTERNATIVE RATE.**

Export commodity rate and minimum weight unreasonable when applied to consignments on which charges would be less if assessed at higher domestic rate and lower minimum. Newark Machine Co. *v.* P. C. C. & St. L. Ry. Co. 291.

Distance tariffs to be applied when no specific rate, or when, under tariff provision, they make lower than specific rate in same tariff. Lee-Warren Milling Co. *v.* C. R. I. & P. Ry. Co. 422 (423).

AMENDMENT.

Defendants consented to inclusion of subsequent shipments and to disposition of same on basis of shipments first presented. U. S. *v.* Adams Express Co. 394 (395).

Leave to amend complaint asked but no amendment filed. Bluff City Oil Co. *v.* St. L. I. M. & S. Ry. Co. 296 (297).

AMMUNITION. See **COMMODITIES**.**ANIMALS.** See **COMMODITIES**.

ANTITRUST.

Fact that advance was result of conference and understanding between carriers is entitled to be duly considered, but this fact of itself does not of necessity establish unreasonableness of such rates. *Chicago Lumber & Coal Co. v. Tioga South-eastern Ry. Co.* 323.

ANY QUANTITY.

Where carriers have in effect a uniform rate per 100 pounds for any quantity, which rate applies uniformly to all shippers, a different rate applied to carloads from that applied to less than carloads will not be ordered, especially when such differential will have a tendency to increase the rate on less than carloads, and, further, to cut off consumers and small dealers from purchasing at distant markets in less-than-carload lots. *Duncan & Co. v. N. C. & St. L. Ry. Co.* 590.

APPEARANCE.

None for defendants, and in absence of any showing tending to justify advance, it will be presumed unreasonable. *Sunderland Bros. Co. v. P. M. R. R. Co.* 450 (451).

None for complainant, complaint dismissed. *Allender v. C. B. & Q. R. R. Co.* 103; *Bedingfield & Co. v. Wis. Cent. Ry. Co.* 93; *Guthrie v. C. R. I. & P. Ry. Co.* 425.

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Through rate applied to intermediate junction points, branch line rate made by adding full local as arbitrary. *Windsor Milling & Elevator Co. v. Colo. & So. Ry. Co.* 349.

Rates, Chicago to Missouri River made by adding arbitrary differential to locals from Mississippi River to Missouri River. *Indianapolis Freight Bureau v. C. C. & St. L. Ry. Co.* 56 (58).

Rates from Indianapolis to Oklahoma not to exceed same from Chicago by certain fixed arbitraries. *Indianapolis Freight Bureau v. C. C. & St. L. Ry. Co.* 254 (269).

ARBITRATION.

Misconstruction of tariff created undercharge; case submitted by stipulation; carrier found entitled to collect. *Davies v. Ill. Cent. R. R. Co.* 376.

ASSOCIATION.

Question raised by defendant with respect of right of complainant association to maintain an action for damages, beneficiaries of which will be its members, considered. *California Commercial Assn. v. Wells Fargo & Co.* 452 (463).

BACK HAUL.

Complainant shipped coal from Rugby, Colo., to Iuka, Kans., but on arrival was refused by consignee, and, after being held 30 days, was reshipped back to Preston, Kans., for which local rate was charged. No warrant for application of charges upon any other basis than as made. *Cedar Hill Coal & Coke Co. v. Colo. & So. Ry. Co.* 560.

Question of whether or not rate to interior point, made up of competitive water or terminal rate plus local rate, is reasonable, must of necessity depend largely upon reasonableness of local rate. *Commercial Club of Hattiesburg v. Alabama Great Southern R. R. Co.* 534 (543).

High rate to intermediate point can not reasonably exceed rate to competitive point plus local back. *Valley Flour Mills v. A. T. & S. F. Ry. Co.* 73 (78).

BAGGAGE.

Through routes ordered from east to northwest via Portland gateway, and through facilities, like checking of baggage, ordered. *In re Through Passenger Routes*, 300.

BAGGING. See **COMMODITIES**.

BANANAS. See **COMMODITIES**.

BARK. See **COMMODITIES**.

BARRELS, EMPTY. See **COMMODITIES**.

BASING POINT.

Differentials diminish with increasing distance and vanish when mileage on which they are based becomes inconsiderable in proportion to total mileage from basing point to destination. *Williams Co. v. V. S. & P. Ry. Co.* 482.

Established that all roads might share in business and all shippers be given opportunity to compete in common markets. *Avery Manufacturing Co. v. A. T. & S. F. Ry. Co.* 20 (23).

High rate to intermediate point can not reasonably exceed rate to competitive point plus local back. *Valley Flour Mills v. A. T. & S. F. Ry. Co.* 73 (78).

BASING RATE.

Between Phoenix, Mesa, and Tempe, Ariz., and points in California, Arizona, New Mexico, Colorado, and Kansas found unreasonable. *Maricopa County Commercial Club v. Wells Fargo & Co.* 182.

St. Louis to Oklahoma rate used as basis for constructing rate from Chicago, which is made fixed differential above St. Louis. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 254 (263).

Rates to southeast made by adding rate to Memphis and rate from Memphis to points beyond. *Ozark Fruit Growers Asso. v. St. L. & S. F. R. R. Co.* 134 (137).

Indianapolis to Missouri River based on combination of locals on East St. Louis. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 56 (57).

BASKETS. See **COMMODITIES**.

BEER. See **COMMODITIES**.

BEET SUGAR. See **COMMODITIES**.

BILL OF LADING.

Weight stated in, subject to correction. *Duluth Log Co. v. C. St. P. M. & O. Ry. Co.* 38 (39).

BITUMINOUS COAL. See **COMMODITIES**.

BLANKET RATES. See also **GROUP RATES**.

In many cases are of great advantage to the public without serious injustice to any interest, though there is of necessity more or less disregard of distance and varying degrees of inequality. *Chicago Lumber & Coal Co. v. Tioga Southeastern Ry. Co.* 323 (324).

In transportation of low-grade commodities that move in large quantities it is long-established custom to group or blanket a number of stations or a large expanse of territory. *Kansas City Transportation Bureau v. A. T. & S. F. Ry. Co.* 195 (204).

Alleged unreasonable because they cover groups of points too widely separated. *Cedar Hill Coal & Coke Co. v. Colo. & So. Ry. Co.* 387.

BOILERS. See **COMMODITIES**.

BOTTLES. See **COMMODITIES**.

BRAN. See **COMMODITIES**.

BRANCH LINE.

Cost of transporting matter to and from point on branch line increased, and rates ought to be somewhat higher for that reason. *Maricopa County Commercial Club v. Wells Fargo & Co.* 182 (184).

Points on one line compared with points on a parallel branch of same line equally distant from concentrating point. *Bartling Grain Co. v. Mo. Pac. Ry. Co.* 494.

Circumstances and conditions different at main-line points from branch-line points. *Board of Trade of Winston-Salem v. N. & W. Ry. Co.* 12 (18).

BRICK. See **COMMODITIES**.

BROKEN GLASS. See **COMMODITIES**.

BUCKWHEAT. See **COMMODITIES**.

BUILDING PAPER. See **COMMODITIES**.

BURDEN OF PROOF.

Where long-established rate is raised for short period, then voluntarily reduced to former point, presumption is that advanced rate is unreasonable, but presumption may be overcome by proof to the contrary. *Sunderland Bros. Co. v. P. M. R. R. Co.* 450 (451).

Complaint asking reparation on ground that, although small car was ordered, one of large capacity was provided to meet convenience of principal defendant, dismissed for want of proof to sustain the allegation. *Wheeler Lumber, Bridge & Supply Co. v. So. Pac. Co.* 547.

Having explained and excused violation of section 4, issue as to reasonableness of intermediate rate must take same course as any other issue involving reasonableness of rates. *Moise Bros. Co. v. C. R. I. & P. Ry. Co.* 550.

Carrier required to observe provisions of the law, and in absence of showing to the contrary it is presumed to be so doing. *Fort Dodge Commercial Club v. Ill. Cent. R. R. Co.* 572 (583).

On account of nonappearance of defendants and in absence of any showing tending to justify advance it is presumed unreasonable. *Sunderland Bros. Co. v. P. M. R. R. Co.* 450 (451).

BUTTER. See **COMMODITIES**.

CABBAGES. See **COMMODITIES**.

CANADA.

Through rate into exceeded combination of locals. *Carlin's Sons Co. v. B. & O. R. R. Co.* 477.

CANCELLATION.

Schedule of rates extended by carrier to shipping public may be canceled upon giving thirty days' notice in conformity with law; but such cancellation is not to be construed as a withdrawal of all rights arising under such tariff to those who have availed themselves of its provisions prior to the date such tariff dies. *Interstate Remedy Co. v. American Express Co.* 436 (438).

Rate once in effect continues to be lawful rate until canceled. Subsequent tariff not canceling previous rates can not carry new rates into effect; and silence of subsequent tariff not accepted as lawful cancellation of previous rates. *New Albany Box & Basket Co. v. Ill. Cent. R. R. Co.* 315.

CANNED PEACHES. See **COMMODITIES**.

CAPACITY.

Minimum should never exceed capacity of car. *Ozark Fruit Growers Asso. v. St. L. & S. F. R. R. Co.* 106 (109).

CAR EARNINGS.

Most satisfactory comparison to ascertain whether relative injustice is being done one section against another, or one commodity against another, is through earnings per car. *Ozark Fruit Growers Asso. v. St. L. & S. F. R. R. Co.* 106 (114).

Earnings per car at less rate on high minimum nearly same as earnings at higher rate on less minimum—Commission not justified in reducing higher rate. *La Salle Paper Co. v. Mich. Cent. R. R. Co.* 149 (150).

Lettuce compared with lumber between approximately same distances. *Voorhees v. A. C. L. R. R. Co.* 45 (47).

CAR RENTAL.

Paid by carrier for use of refrigerator car. *Voorhees v. A. C. L. R. R. Co.* 45 (47).

CARLOAD AND LESS THAN CARLOAD.

Where carriers have in effect uniform rate per 100 pounds for any quantity, which rate applies uniformly to all shippers, different rate applied to carloads from that applied to less than carloads will not be ordered, especially when such differential will have tendency to increase rate on less than carloads, and, further, to cut off consumers and small dealers from purchasing at distant markets in less-than-carload lots. *Duncan & Co. v. N. C. & St. L. Ry. Co.* 590.

Differentiation *by the carriers* of carloads from less than carloads in application of rates may be warranted under certain conditions. *Duncan & Co. v. N. C. & St. L. Ry. Co.* 590 (593).

If shipment in excess of capacity of one car, carload rate applies on whole shipment. *Indianapolis Freight Bureau v. C. C. & St. L. Ry. Co.* 56 (67).

Shipments offered in carload quantities entitled to carload rate. *Voorhees v. A. C. L. R. R. Co.* 42 (43).

Carload freight ordinarily loaded by shipper. *Ames Brooks Co. v. Rutland R. R. Co.* 479 (481).

CARRIER'S DUTY.

Carriers are common servants of all shippers and are bound to serve them all reasonably and without undue prejudice. *Avery Manufacturing Co. v. A. T. & S. F. Ry. Co.* 20 (24).

Railroads are public servants and it is their first duty to accord to public proper facilities. *In re Through Passenger Routes*, 300 (309).

CAR SIZE.

Unsound in principle to permit carrier to impose additional charges on shipper who ordered car of capacity, length, or dimension specified in tariffs, simply because it is not provided with car of dimensions ordered. *Kaye & Carter Lumber Co. v. Minn. & Int. Ry. Co.* 285.

Carriers supplied cars of larger dimension, but protected minimum weights of sizes ordered. Shipment reshipped on separately established tariff of connecting line which declined to protect minimum weights. Under circumstances complaint dismissed. *Slimmer & Thomas v. Pa. Co.* 531.

Complaint asking reparation on the ground that, although small car was ordered, one of large capacity was provided to meet convenience of principal defendant, dismissed for want of proof to sustain allegation. *Wheeler Lumber, Bridge & Supply Co. v. So. Pac. Co.* 547.

Car furnished of greater capacity than ordered. *Beggs v. Wabash R. R. Co.* 208; *Hanna Coal Co. v. Nor. Pac. Ry. Co.* 289.

CARTRIDGES. See **COMMODITIES**.

CATTLE. See **COMMODITIES**.

CAUSE OF ACTION, ACCRUAL. See **LIMITATION**.

CEDAR LUMBER. See **COMMODITIES**.

CEDAR POLES. See **COMMODITIES**.

CEDAR POSTS. See **COMMODITIES**.

CHAIRS. See **COMMODITIES**.

CHARTER.

Municipal charter is not determinative of relations which community bears to railroad which gives it service. *Enterprise Fuel Co. v. Pa. R. R. Co.* 219 (223).

CHEESE. See **COMMODITIES**.

CHESTNUT TIES. See **COMMODITIES**.

CIRCUMSTANCES AND CONDITIONS.

Difficult to determine that one theory is reasonable and right for one manufacturer or shipper and another theory is reasonable and right for another under substantially similar circumstances and conditions. *Douglas & Co. v. C. R. I. & P. Ry. Co.* 232 (242).

CIRCUMSTANCES AND CONDITIONS—Continued.

Not unduly discriminatory to haul traffic to and from Gulf ports at lower rates than to and from Hattiesburg. Controlling effect of Mississippi River and Gulf justify that adjustment. *Commercial Club of Hattiesburg v. Alabama Great Southern R. R. Co.* 534 (545).

Decision in another case against other carriers operating in different territory under essentially dissimilar circumstances and conditions affords no controlling precedent. *Chicago Lumber & Coal Co. v. Tioga Southeastern Ry. Co.* 323.

If water competition at one point compels carrier to discriminate against point not so favorably situated, discrimination must not be greater than dissimilarity of circumstances demand. *Planters Gin & Compress Co. v. Y. & M. V. R. R. Co.* 131 (133).

The rate to San Francisco made under circumstances of water competition and therefore may be lower than to intermediate points where such competition does not exist. *Rogers v. O. R. R. & N. Co.* 424 (425).

Water competition at given point may render dissimilar and justify discrimination against points where such competition is not controlling. *Planters Gin & Compress Co. v. Y. & M. V. R. R. Co.* 131 (133).

At intermediate point and longer-distance point found substantially similar; higher rate to former condemned. *Heileman Brewing Co. v. C. M. & St. P. Ry. Co.* 396 (397).

Difficult operation of roads should be passed upon in considering reasonableness of rates involved. *Cedar Hill Coal & Coke Co. v. Colo. & So. Ry. Co.* 387 (391).

Beecher Lake, Wis., to Chicago same as from Pembine, Wis., a farther-distant point; rates on laths should be the same. *Neufeld v. C. M. & St. P. Ry. Co.* 26 (27).

Competition of carriers at New York justifies longer free time in unloading of flour than at Philadelphia. *Brey v. P. R. R. Co.* 497.

Different at milling point from those at point where no milling is done. *Valley Flour Mills v. A. T. & S. F. Ry. Co.* 73 (78).

Different at main-line points from branch-line points. *Board of Trade of Winston-Salem v. N. & W. Ry. Co.* 12 (18).

Competition at El Paso justifies lower rates than to Santa Rosa, N. Mex. *Moise Bros. Co. v. C. R. I. & P. Ry. Co.* 550.

Between Indianapolis and Chicago to Missouri River. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 56.

Different at longer-distant point. *Bartling Grain Co. v. Mo. Pac. Ry. Co.* 494 (496).

CLAM SHELLS. See **COMMODITIES**.

CLASS AND COMMODITY RATES. See also **COMMODITIES**.

Argument that as starch is classified in classification under class rates, while grain is transported under commodity rates, starch should take higher rate than grain, of no force. *Douglas & Co. v. C. R. I. & P. Ry. Co.* 232 (243).

Class rate applied lower commodity rate subsequently established; former held unreasonable. *Bluff City Oil Co. v. St. L. I. M. & S. Ry. Co.* 296; *Mineral Point Zinc Co. v. Wabash R. R. Co.* 440.

Cancellation of proportional commodity rates on hay, resulting in application of higher class rates. *Kansas City Hay Co. v. C. M. & St. P. Ry. Co.* 100; *Arkansas Fuel Co. v. C. M. & St. P. Ry. Co.* 95.

Practically all commodities under commodity rates are also listed in the classification. *Douglas & Co. v. C. R. I. & P. Ry. Co.* 232 (243).

Publication of commodity rate takes commodity out of classification. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 56 (70).

CLASSIFICATION.

While carriers themselves may be able to select certain articles and apply to them a particular rate for some particular purpose, it is difficult to see how Commission could attempt to lay down any general rule. *Association of Union Made Garment Manufacturers v. C. & N. W. Ry. Co.* 405 (407).

CLASSIFICATION—Continued.

Higher classification and minimum charges upon empty oil barrels from points in New Mexico to El Paso, Tex., than from same points to Albuquerque found unreasonable. *Great Western Oil Co. v. A. T. & S. F. Ry. Co.* 505.

Any change in, affects the revenues of carrier. *Association of Union Made Garment Manufacturers v. C. & N. W. Ry. Co.* 405 (409).

Mole traps, crated, accorded third-class rate, same as in barrels or boxes. *Reddick v. Mich. Cent. R. R. Co.* 492 (493).

"Pin Yon" soap, Western Classification. *Iowa Soap Co. v. C. B. & Q. R. R. Co.* 444.

Building and roofing paper, Erie, Pa., to C. F. A. *Watson Co. v. L. S. & M. S. Ry. Co.* 124.

CLAYED BAGGING. See COMMODITIES.

CLERICAL ERROR. See TARIFF.

CLOVER HULLERS. See COMMODITIES.

COAL. See COMMODITIES.

COFFEE. See COMMODITIES.

COKE. See COMMODITIES.

C. O. D.

Cancellation of rule permitting reduced rate on returned shipments. *Interstate Remedy Co. v. American Express Co.* 436.

COLORED PASSENGERS.

Principle in *Edwards case*, 12 I. C. C. 247, that common carriers may not, in the accommodations which they furnish to each, unjustly discriminate between white and colored passengers paying same fare, reaffirmed. *Cozart v. So. Ry. Co.* 226.

Discrimination or prejudice not shown. *Gaines v. S. A. L. Ry.* 471.

COMBINATION. See ANTI TRUST.

COMBINATION RATE.

Passenger may properly pay fare to state line and again from state line to destination, though he thereby obtains through transportation for less than published through rate, and though deliberately seeking this means of obtaining transportation at less than through rate. *Kurtz v. Penn. Co.* 410 (413).

That through rate should not exceed sum of locals is a doctrine well established, but it does not follow as a corollary that the sum of locals should always be reduced to equal through rate. *Williams Co. v. V. S. & P. Ry. Co.* 482 (485).

No law, common or statute, under which jobber is entitled to distribute commodities under as low or lower rates as through rates from points of origin to points of consumption. *Williams Co. v. V. S. & P. Ry. Co.* 482 (486).

Lower than through rate; reduction of property to complainant's possession at intermediate point was condition precedent to lawful application of combination. *Wood Butter Co. v. C. C. C. & St. L. Ry. Co.* 374 (375).

Carriers ordered to establish a reasonable local rate from Sterling, Ill., to Wausa, Nebr., when such shipments originate at Christopher, Ill. *Sunderland Bros. Co. v. C. & N. W. Ry. Co.* 212 (213).

Indianapolis to Missouri River constructed by adding local rates from Indianapolis to East St. Louis to locals beyond. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 56 (57).

Rates from Indianapolis to Kansas and Oklahoma constructed by adding locals to and from Mississippi River. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 254 (263).

Assessed when notation not made on bill of lading showing ultimate destination of lumber milled in transit. *Roper Lumber-Cedar Co. v. C. & N. W. Ry. Co.* 382.

High rate to intermediate point can not reasonably exceed rate to competitive point plus local back. *Valley Flour Mills v. A. T. & S. F. Ry. Co.* 73 (78).

COMBINATION RATE—Continued.

- Rates to southeast made by adding rate to Memphis and rate from Memphis to points beyond. *Ozark Fruit Growers Assn. v. St. L. & S. F. R. R. Co.* 134 (137).
Asher, Okla., to St. Vrain, N. Mex., based on Amarillo, Tex.; rate west of Amarillo found unreasonable. Snook & Janes v. A. T. & S. F. Ry. Co. 356.
 Found unreasonable by comparison with rate via another route, higher rate subsequently reduced to that via other route. *Swift & Co. v. T. & P. Ry. Co.* 442.
 Combination of local class rates higher than subsequently established through rate; former held unreasonable. *Allen & Co. v. C. M. & St. P. Ry. Co.* 293.
 Local rate, plus through rate, compared with joint through rate to farther distant points. *Stone-Ordean-Wells Co. v. N. P. Ry. Co.* 313.
 No joint through rate to destination on new extension of line, excessive local rate refunded. *Philip v. C. M. & St. P. Ry. Co.* 418.
 No through rate, combination being applied. *American Beet Sugar Co. v. C. R. I. & P. Ry. Co.* 288.
 Express packages, New York to Courtenay, N. Dak., on St. Paul. *Sanford v. Western Express Co.* 32 (33).
 Exceeded by through rate. *Alphons Custodis Chimney Construction Co. v. Vandalia R. R. Co.* 600.

COMMODITIES.

- Agricultural implements, Galva, Canton, and Springfield, Ill., to Missouri River, 20.
 Agricultural implements, Minneapolis to New York, 193.
 Agricultural implements, Newark, Ohio, to Baltimore, 291.
 Agricultural machinery, De Kalb, Ill., to Olivia and Hutchinson, Minn. 447.
 Alfalfa hay, Deming, N. Mex., to Bisbee, Ariz., and from El Paso, Tex., to Douglas and Bisbee, Ariz. 435.
 Ammunition, Kings Mills, Ohio, to Muncie, Ind. 298.
 Animals, express rates, 214.
 Anthracite coal, Alden, Pa., to Walbrook and Hillen, Md., 219.
 Anthracite coal, Superior, Wis., to North and South Dakota, 289.
 Apples, Ozark region to southeastern and southwestern points, 134.
 Bagging, clayed, Indianapolis to Winona and St. Paul, Minn. 276.
 Bagging, Vicksburg, Miss., to Texas common points, 482.
 Bananas, New Orleans and Mobile to Iowa points, 151.
 Bark, Trenary, Mich., to Milwaukee, Wis. 348.
 Barrels, New Mexico to El Paso, Tex. 505.
 Baskets, Traverse City, Mich., to Montrose, Iowa, 339.
 Beer, Indianapolis to St. Paul and Winona, 276.
 Beer, La Crosse, Wis., to Glencoe, Minn. 396.
 Beet sugar, Las Animas, Colo., to Romero, Tex. 288.
 Billets, Cincinnati territory to Arkansas territory, 155.
 Bituminous coal, Moundsville district to western points, 512.
 Bituminous coal, Pocohontas (Va.) Dist. to Winston-Salem and Durham, N. C. 12.
 Bituminous coal, Sterling, Ill., to Wausa, Nebr. 212.
 Bituminous coal, Walsenburg district, Colo., to Kansas, Nebraska, Oklahoma, Texas and New Mexico, 387.
 Boilers, Kalamazoo, Mich., to Blue Mounds and Mount Horeb, Wis. 441.
 Bottles, Indianapolis to St. Paul and Winona, 276.
 Bran, Salina, Kans., to Hugo, Okla. 422.
 Brick, Brazil, Ill., to Minnesota Transfer, Minn. 600.
 Brick, North Birmingham, Ala., to Washington, D. C. 585.
 Broken glass, New York, N. Y., to Kane, Pa. 126.
 Buckwheat, Cattaraugus, N. Y., to Janesville, Wis. 384.
 Building paper, classification, Erie, Pa., to C. F. A. 124.

COMMODITIES—Continued.

- Building paper, Indianapolis to St. Paul and Winona, 276.
- Building paper, St. Joseph, Mich., to Wausau, Wis. 399.
- Butter, Wellington, Ohio, to Evansville, Wis. 374.
- Cabbages, Mississippi and Louisiana to Chicago, 376.
- Cabbages, St. Andrews, S. C., to New York, 42.
- Canned peaches, Martindale, Ga., to Chattanooga, Tenn. 523.
- Cartridges, Kings Mills, Ohio, to Muncie, Ind. 298.
- Cattle, Midland, Tex., to Kennebec, S. Dak. 418.
- Cattle, South St. Paul, to Philadelphia, Pa. 531.
- Cedar lumber, Idaho to Wyoming, 449.
- Cedar poles, Chicago to Brady, Tex. 40.
- Cedar poles, Hines, Minn., to Clearfield, Iowa, and Kingman, Kans. 285.
- Cedar posts, Idaho to Wyoming, 449.
- Chairs, Grafton, Wis., to Chicago, 217.
- Chairs, Indianapolis to Arkansas, Louisiana, Oklahoma, and Texas, 254.
- Chairs, Indianapolis to Missouri River, 56.
- Cheese, Wisconsin points to Chicago, 85.
- Chestnut ties, Vanceburg, Ky., to Carroll Park Siding, Baltimore, Md. 565
- Clam shells, Mendota, Minn., to La Crosse, Wis. 80.
- Class rates, Austin, Minn., to Dayton, Ohio, grease, 82.
- Class rates, Chicago to Fort Dodge, Iowa, 572.
- Class rates, Chicago, Kansas City, Memphis, and St. Louis to Santa Rosa, N. Mex. 550.
- Class rates, Hattiesburg, Miss., from C. F. A. 534.
- Class rates, Indianapolis to Louisiana, 254.
- Class rates, Indianapolis to Missouri River, 56.
- Class rates, Indianapolis to Oklahoma, 254.
- Class rates, Indianapolis to St. Paul and Winona, 276.
- Class rates, Indianapolis to Southern States, 142.
- Class rates, Kansas City to Mississippi River, hay, 100.
- Class rates, Kansas City to Seymour, Iowa, hay, 95.
- Class rates, St. Paul to North and South Dakota, 293.
- Class rates, Spokane, Wash., from St. Paul and Chicago, 179.
- Class rates, Vicksburg, Miss., to Texas common points, 482.
- Classification, cotton clothing, 405.
- Classification, empty oil barrels, El Paso, Tex., from New Mexico, 505.
- Classification, mole traps, Niles, Mich., to Chicago, 492.
- Classification, "Pin Yon" soap, 444.
- Classification, roofing and building paper, 124.
- Clayed bagging, Indianapolis to Winona and St. Paul, 276.
- Clover hullers, Newark, Ohio, to Baltimore, 291.
- Coal, Alden, Pa., to Walbrook and Hillen, Md. 219.
- Coal, Cameo and South Canon, Colo., to western points, 452.
- Coal, Chicago to Fort Dodge, Iowa, 572.
- Coal, Fairmont district, W. Va., to St. George, Staten Island, N. Y., demurrage, 360.
- Coal, Louisville, Colo., to points in Kansas, Nebraska, Missouri, Iowa, and Oklahoma, 369.
- Coal, Ludlow, Colo., to points on Santa Fe, 402.
- Coal, Moundsville district to western points, 512.
- Coal, Pocahontas (Va.) district to Winston Salem and Durham, N. C. 12.
- Coal, Rugby, Colo., to Iuka, Kans. 560.
- Coal, Sterling, Ill., to Wausau, Nebr. 212.
- Coal, Strong, Colo., to Milford, Nebr. 558.
- Coal, Superior, Wis., to North and South Dakota, 289.

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- Coal, Walsenburg district, Colo., to Kansas, Nebraska, Oklahoma, Texas, and New Mexico, 387.
- Coal, Wellston, Ohio, to Manitowoc, Wis. 450.
- Coffee, Indianapolis to Oklahoma, 254.
- Coke, Chicago to Fort Dodge, Iowa, 572.
- Cooperage, Prairie Grove, Ark., to East St. Louis, Ill. 186.
- Cooperage stock, Cardington, Ohio, to Green Bay, Wis. 420.
- Corn, Bates, Ill., to Detroit, Mich. 208.
- Corn, Kansas City to Mississippi River, Ohio River, Carolinas, and Gulf ports, 195.
- Corn, Missouri, Kansas, and Oklahoma to Gulfport, Miss. 385.
- Corn, Okemah, Okla., to Terrell, Tex. 28.
- Corn, Talmage and Brock, Nebr., to St. Louis, 494.
- Corn, Tupelo, Okla., to Forrest City, Ark. 569.
- Cornstarch, in-transit rates at Cedar Rapids, 232.
- Cotton, Alachua, Gainesville, and Hawthorne, Fla., to Savannah, Ga. 1.
- Cotton, compressed, Hermanville, Miss., to New Orleans, 131.
- Cotton, Marshall, Tex., to East St. Louis, 353.
- Cotton bagging, Vicksburg, Miss., to Texas common points, 482.
- Cotton piece goods, classification, Official, Western, and Southern, 405.
- Cotton seed, Kilbourne, La., to Pine Bluff, Ark. 296.
- Cross-ties, gum switch-ties, Fenter, Ark., to Woodruff, Mo. 528.
- Cross-ties, Vanceburg, Ky., to Carroll Park siding, Baltimore, Md. 565.
- Cullet, New York, N. Y., to Kane, Pa. 126.
- Cypress lumber, Baden and Kirkpatrick, Miss., to Davenport, Iowa, 209.
- Dairy products, icing charge, 426.
- Dredging-machine parts, Chicago to Oroville, Cal. 566.
- Dried fruit, Fresno, Cal., to Bozeman and Billings, Mont. 313.
- Dry goods, St. Paul, Minn., to Courtenay, N. Dak., 32.
- Dry-kiln outfits, Indianapolis to southern points, 142.
- Elevator guides, Chicago to Portland, Oreg. 502.
- Elm hoops, Cardington, Ohio, to Green Bay, Wis. 420.
- Elm hoops, Prairie Grove, Ark., to East St. Louis, Ill. 186.
- Empty oil barrels, New Mexico points to El Paso, 505.
- Fence posts, Amarillo, Tex., to St. Vrain, N. Mex. 356.
- Fence, wire, Cincinnati territory to Arkansas territory, 155.
- Fertilizer, Shreveport, La., to Arkansas points, 49.
- Fir lumber, Kalispell district to points on Pembina-Port Arthur line, 164.
- Flour, Kansas points to Phoenix, Ariz. 73.
- Flour, free time at Philadelphia, 497.
- Flour, Windsor, Colo., to Eunice and Opelousas, La. 349.
- Fresh meats, icing charge, 426.
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- Fruit, Ozark region to north, east, and west, 106, 134, 153.
- Fruit, track-storage charges at Pittsburg, 116.
- Furnaces, Indianapolis to St. Paul and Winona, 276.
- Furniture, Grafton, Wis., to Chicago, 217.
- Furniture, Indianapolis to Arkansas, Texas, Oklahoma, and Louisiana, 254.
- Furniture, Indianapolis to Missouri River points, 56.
- Furniture, Quincy, Ill., to San Francisco, 341.
- Fuse, Avon, Conn., to Pleasant Prairie, Wis. 351.
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- Gasoline, Reno, Pa., to Milton Junction, Wis. 401.

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- Ginger ale, Waukesha, Wis., to Macon, Ga. 93.
Glass, broken, New York, N. Y., to Kane, Pa. 126.
Glass bottles, Indianapolis to St. Paul and Winona, 276.
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Grain, Cedar Rapids, to and from various points, 232.
Grain, C. F. A. to Hattiesburg, Miss. 534.
Grain, Kansas City to Mississippi River, Carolinas, Ohio River, and Gulf ports, 195.
Grain, ex lake, Ogdensburg, N. Y., to Boston, 479.
Grain, Ohio and Mississippi River crossings to Atlanta, 590.
Grain, Omaha, elevator allowance, 337.
Grain, Talmage and Brock, Nebr., to St. Louis, 494.
Grain products, C. F. A. to Hattiesburg, Miss. 534.
Grain products, Ohio and Mississippi River crossings to Atlanta, 590.
Grape baskets, Traverse City, Mich., to Montrose, Iowa, 339.
Grease, non-edible, Austin, Minn., to Dayton, Ohio, 82.
Groceries, St. Paul to Hettinger, N. Dak., and Lemmon, S. Dak. 293.
Ground iron ore, Iron Ridge, Wis., to Michigan City, Ind., and Louisville, Ky. 562.
Ground iron ore, Iron Ridge, Wis., to various points in other States, 587.
Hay, Deming, N. Mex., to Bisbee, Ariz., and from El Paso, Tex., to Douglas and Bisbee, Ariz. 435.
Hay, Kansas City, Mo., to Clinton, Ohio, 490.
Hay, Kansas City to St. Louis, reconsigned to southeastern points, 146.
Hay, Kansas City to Peoria, La Salle, Des Moines, and Stillwater, 100.
Hay, Ohio and Mississippi River crossings to Atlanta, 590.
Hay, Seymour, Iowa, from Kansas City, Mo. 95.
Hoops, elm, Cardington, Ohio, to Green Bay, Wis. 420.
Hoops, Prairie Grove, Ark., to East St. Louis, Ill. 186.
Household goods, El Reno, Okla., to Cabin Creek, Ark. 425.
Household goods, Spokane, Wash., to Medford, Oreg. 424.
Hullers, Newark, Ohio, to Baltimore, Md. 291.
Iron articles, Indianapolis to Oklahoma, 254.
Iron articles, Indianapolis to St. Paul and Winona, 276.
Iron ore, Iron Ridge, Wis., to Michigan City, Ind., and Louisville, Ky. 562.
Iron ore, Iron Ridge, Wis., to various points in other States, 587.
Iron pyrites, New York to Cleveland and Linndale, Ohio, 320.
Iron, pig, Sheffield, Ala., to Hutchinson, Kans. 144.
Iron structural, Indianapolis to Winona and St. Paul, 276.
Jackets, Classification, Official, Western, and Southern territories, 405.
Kiln, dry, outfits, Indianapolis to southern points, 142.
Kitchen safes, Indianapolis to Oklahoma, 254.
Ladders, Indianapolis to Arkansas, Louisiana, Oklahoma, and Texas, 254.
Larch, Kalispell district to points on Pembina-Port Arthur line, 164.
Laths, Beecher Lake, Wis., to Chicago, 26.
Lettuce, St. Andrews, S. C., to New York, 45.
Lignite coal, Louisville, Colo., to points in Kansas, Nebraska, Missouri, Iowa, and Oklahoma, 369.
Linseed meal, Minneapolis, Minn., to Milo, Mo. 366.
Live animals, express rates, 214.
Live stock, Haverhill, Kans., to East St. Louis, Ill. 188.
Loaded paper shells, Kings Mills, Ohio, to Muncie, Ind. 298.
Logs, Chicago, Ill., to Brady, Tex. 40.
Logs, Dyersburg, Tenn., to Louisville, Ky. 315.
Lumber, Arkansas and northern Louisiana to C. F. A. territory, 323, 335, 336.

COMMODITIES—Continued.

- Lumber, Baden and Kirkpatrick, Miss., to Davenport, Iowa, 209.
- Lumber, De Queen, Ark., to Memphis, Tenn. 129.
- Lumber, Dyersburg, Tenn., to Louisville, Ky. 315.
- Lumber, Hillsboro, Oreg., to Algona, Iowa, 547.
- Lumber, Idaho to Wyoming, 449.
- Lumber, Kalispell district to points on Pembina-Port Arthur line, 164.
- Lumber, Marinette, Wis., and Menominee, Mich., milling in transit, 382.
- Lumber, Missoula district to North Dakota points, 173.
- Lumber, North Pacific coast territory to eastern destinations, 465.
- Lump coal, Strong, Colo., to Milford, Nebr. 558.
- Machinery, Allegheny, Pa., to Victoria Mines, Ontario, Canada, 477.
- Machinery, Chicago to Oroville, Cal. 566.
- Machinery, Indianapolis to Oklahoma, 254.
- Malt, Chilton, Wis., to Kansas City, Mo. 10.
- Manure, Chicago to Toledo, Ohio, 571.
- Manure spreader, De Kalb, Ill., to Olivia and Hutchinson, Minn. 447.
- Marble, Long Island City, N. Y., to Shipman, Va. 177.
- Masurite, Sharon, Pa., to Wilcoe, W. Va. 530.
- Meats, icing charge, 426.
- Meats, Fort Worth, Tex., to Rocky Mount, N. C. 442.
- Medicine, New York to Courtenay, N. Dak., 32.
- Medicines, return at reduced rates, 436.
- Merchandise, New York and St. Paul, Minn., to Courtenay, N. Dak., 32.
- Merchandise, New York to San Francisco, 458.
- Merchandise, Washington, D. C., to Bremerton, Wash. 394.
- Metallic cartridges, Kings Mills, Ohio, to Muncie, Ind. 298.
- Mineral water, Waukesha, Wis., to Macon, Ga. 93.
- Mole traps, Niles, Mich., to Chicago, 492.
- Nails, Cincinnati territory to Arkansas territory, 155.
- Non-edible grease, Austin, Minn., to Dayton, Ohio, 82.
- Oak lumber, De Queen, Ark., to Memphis, Tenn. 129.
- Oil, Reno, Pa., to Milton Junction, Wis. 401.
- Oil barrels, empty, New Mexico to El Paso, 505.
- Oil meal, Minneapolis, Minn., to Milo, Mo. 366.
- Oil-well supplies, Fishers, Ind., to Bartlesville, Okla. 318.
- Overalls, classification, Official, Western, and Southern classifications, 405.
- Packing-house products, C. F. A. to Hattiesburg, Miss. 534.
- Packing-house products, Fort Worth, Tex., to Rocky Mount, N. C. 442.
- Pails, paper, Chicago to San Francisco, 128.
- Paper. See Building and Roofing Paper.
- Paper pails, Chicago to San Francisco, 128.
- Paper shells, Kings Mills, Ohio, to Muncie, Ind. 298.
- Paper stock, Chicago to South Bend, Ind. 149.
- Peaches, Ozark region to east, north, and west, 106, 153.
- Pickles, Ottumwa, Iowa, to Kansas City, Mo. 368.
- Pig iron, Sheffield, Ala., to Hutchinson, Kans. 144.
- "Pin Yon" soap, classification, 444.
- Pipe, Fishers, Ind., to Bartlesville, Okla. 318.
- Play suits, classification, Official, Western, and Southern, 405.
- Poles, Chicago to Brady, Tex. 40.
- Poles, Hines, Minn., to Clearfield, Iowa, and Kingman, Kans. 285.
- Poles, Marinette, Wis., and Menominee, Mich., milling-in-transit, 382.
- Poles, Washburn, Wis., to Winside, Nebr., and Northome, Minn., to James, Iowa, 38.

COMMODITIES—Continued.

- Posts, Amarillo, Tex., to St. Vrain, N. Mex. 356.
- Posts, Idaho to Wyoming, 449.
- Posts, Marinette, Wis., and Menominee, Mich. 382.
- Posts, Wittenburg, Wis., to Whittemore, Iowa, 525.
- Potatoes, Pound, Wausaukee, and Beaver, Wis., to Painesdale, Mich. 364.
- Poultry, refrigeration and icing charges, 426.
- Range cattle, Midland, Tex., to Kennebec, S. Dak. 418.
- Rice, New Orleans, La., to Billings, Mont. 30.
- Rock salt, Lyons, Kans., to Lusk, Wyo. 433.
- Rods, wire, Cincinnati territory to Arkansas territory, 155.
- Roofing paper, classification, Erie, Pa., to C. F. A. 124
- Roofing paper, Indianapolis to St. Paul and Winona, 276.
- Rye, Arlington, S. Dak., to Milwaukee, 431.
- Safety fuse, Avon, Conn., to Pleasant Prairie, Wis. 351.
- Salt, Lyons, Kans., to Lusk, Wyo. 433.
- Salt, Washburn, Wis., to western points, 507.
- Sawdust, Duluth, Minn., to Andover, S. Dak. 190.
- Sea-island cotton, Alachua, Gainesville, and Hawthorne, Fla., to Savannah, Ga. 1.
- Shells, Kings Mills, Ohio, to Muncie, Ind. 298.
- Shells, clam, Mendota, Minn., to La Crosse, Wis. 80.
- Shelled corn, Okemah, Okla., to Terrell, Tex. 28.
- Shingles, Marinette, Wis., and Menominee, Mich., milling-in-transit. 382.
- Shirts, classification, Official, Western, and Southern classifications. 405.
- Show cases, Quincy, Ill., to San Francisco, Cal. 341.
- Snapped corn, Okemah, Okla., to Terrell, Tex. 28.
- Soap, "Pin Yon" with safety pin, classification, 444.
- Soft coal, Sterling, Ill., to Wausa, Nebr. 212.
- Soft coal, Wellston, Ohio, to Manitowoc, Wis. 450.
- Splint coal, Illinois to Fort Dodge, Iowa, 572.
- Starch, in-transit rates on corn through Cedar Rapids, 232.
- Steel, Buffalo, N. Y., to Watertown, Wis. 358.
- Steel articles, Indianapolis to Oklahoma, 254.
- Steel articles, Indianapolis to St. Paul and Winona, 276.
- Steel products, Cincinnati territory to Arkansas territory, 155.
- Stone, Long Island City, N. Y., to Shipman, Va. 177.
- Stoves, Indianapolis to Oklahoma, 254.
- Stoves, Indianapolis to St. Paul and Winona, 276.
- Strawberries, Ozark region to north, east, and west, 106, 153.
- Structural iron, Indianapolis to Winona and St. Paul, 276.
- Sugar, Las Animas, Colo., to Romero, Tex. 288.
- Sulphuric acid, Howe, Ill., to Aetna, Ind. 440.
- Switch-ties, Fenter, Ark., to Woodruff, Mo., 528.
- Tan bark, Trenary, Mich., to Milwaukee, Wis. 348.
- Tanning outfit, Milwaukee, Wis., to Tacoma, Wash. 469.
- Tee rails, Chicago to Portland, Oreg. 502.
- Ties, Fenter, Ark., to Woodruff, Mo. 528.
- Ties, Vanceburg, Ky., to Carroll Park siding, Baltimore, Md. 565.
- Traps, Niles, Mich., to Chicago, 492.
- Vehicles, Indianapolis to Arkansas, Louisiana, Oklahoma, and Texas, 254.
- Vehicles, Indianapolis to St. Paul and Winona, 276.
- Vehicles, Lawrenceburg, Ind., to Milwaukee, 6.
- Wagons, Racine, Wis., to Abilene, Tex., 488.
- Water, mineral, Waukesha, Wis., to Macon, Ga. 93.

COMMODITIES—Continued.

Wheat, Arlington, S. Dak., to Milwaukee, 431.

Wheat, Kansas points to Phoenix, Ariz. 73.

Wheat, Kansas City to Mississippi River, Ohio River, Carolinas, and Gulf ports, 195.

Wheat, Talmage and Brock, Nebr., to St. Louis, 494.

Wire products, Cincinnati territory to Arkansas territory, 155.

Woodenware, Indianapolis to Oklahoma, 254.

Yellow pine, Arkansas and northern Louisiana to C. F. A. territory, 323, 335, 336.

COMMON CARRIERS.

Are the common servants of all shippers and are bound to serve all reasonably and without undue prejudice. *Avery Manufacturing Co. v. A. T. & S. F. Ry. Co.* 20 (24).

Pullman Company is, and subject to jurisdiction of this Commission. *Kurtz v. Penn. Co.* 410 (414).

COMMON LAW.

No warrant in common law for theory that carrier as shipper over lines of another carrier may enjoy or be given a preferred status. *Hitchman Coal & Coke Co. v. B. & O. R. R. Co.* 512.

COMMON POINT.

It is important to have a common rate at three competing points if the conditions justify it. *Railroad Commissioners of Florida v. S. A. L. Ry.* 1 (2).

COMPANY MATERIAL.

Carrier as shipper over lines of another carrier may not lawfully be given any preference in application of tariff rates on interstate shipments. *Hitchman Coal & Coke Co. v. B. & O. R. R. Co.* 512.

COMPARATIVE RATES.

If cost of transporting raw material is very much less than manufactured article, then the process of manufacturing can, so far as the freight rate goes, be more advantageously conducted in the vicinity where the garment is finally sold. *Association of Union Made Garment Manufacturers v. C. & N. W. Ry. Co.* 405 (408).

Argument that as starch is classified in classification under class rates, while grain is transported under commodity rates, starch should take higher rate than grain, of no force. *Douglas & Co. v. C. R. I. & P. Ry. Co.* 232 (243).

Most satisfactory comparison to ascertain whether relative injustice is being done one commodity against another is through earnings per car. *Ozark Fruit Growers Assn. v. St. L. & S. F. R. R. Co.* 106 (114).

Argued that starch is more valuable than corn and should take higher rates. If this is sound, it is equally so as to oatmeal and oats, flour and wheat, etc. *Douglas & Co. v. C. R. I. & P. Ry. Co.* 232 (243).

Paper stock, Chicago to South Bend, Ind., compared with manufactured paper between same points. *La Salle Paper Co. v. Mich. Cent. R. R. Co.* 149.

Rates on ties that exceed the rates on lumber of the same character as the ties are unreasonable. *Beekman Lumber Co. v. C. R. I. & P. Ry. Co.* 528.

Grain products are transported at grain rates, or certain close relationships are observed. *Douglas & Co. v. C. R. I. & P. Ry. Co.* 232 (243).

Cotton garments compared with woolen garments. *Association of Union Made Garment Manufacturers v. C. & N. W. Ry. Co.* 405.

Rate on poles and logs ought not to exceed that on manufactured lumber. *MacGillis & Gibbs Co. v. C. & E. I. R. R. Co.* 40.

Wheat and flour, Kansas points to Phoenix, Ariz., differential prescribed. *Valley Flour Mills v. A. T. & S. F. Ry. Co.* 73.

Earnings on lettuce compared with lumber between approximately same distances. *Voorhees v. A. C. L. R. R. Co.* 45 (47).

COMPARATIVE RATES—Continued.

Small live animals for laboratory work compared with same for pets. *Davis v. West Jersey Express Co.* 214.

Ground iron ore compared with pig iron. *Winters Metallic Paint Co. v. C. M. & St. P. Ry. Co.* 587 (588).

COMPETITION. See also COMPETITIVE RATE; DISCRETION; MARKET COMPETITION; VOLUNTARY; WATER COMPETITION.

Garments of cotton and wool come into competition with each other, and since the freight rate determines in a degree the price at which the garment can be sold, it follows that the rate must in a measure determine the ability of the complainant to sell its product. *Association of Union Made Garment Manufacturers v. C. & N. W. Ry. Co.* 405 (408).

Not unlawful for defendants to meet in rates from C. F. A. territory and from Atlantic ports competition created at Meridian and Jackson by the lines from St. Louis and by the Illinois Central from Louisville without also giving the same rates to Hattiesburg. *Commercial Club of Hattiesburg v. Alabama Great Southern R. R. Co.* 534 (546).

Not unduly discriminatory to haul traffic to and from Gulf ports at lower rates than to and from Hattiesburg. Controlling effect of Mississippi River and Gulf justify that adjustment. *Commercial Club of Hattiesburg v. Alabama Great Southern R. R. Co.* 534 (545).

Where competitive conditions among shippers are leading considerations that induce complaint, Commission must have due regard to transportation conditions and rights of carriers as well as shippers. *Chicago Lumber & Coal Co. v. Tioga Southeastern Ry. Co.* 323.

Rates on parts of defendant's line forced down to a very low point no justification for unreasonable rates to another point. *Board of Trade of Winston-Salem v. N. & W. Ry. Co.* 12 (16).

Low short-line rate justifies long line meeting it though charging less than from a shorter distance point. *Avery Manufacturing Co. v. A. T. & S. F. Ry. Co.* 20 (25).

Low short-line rate to longer-distance point justifying lower rates than to intermediate points on longer line. *Fort Dodge Commercial Club v. Ill. Cent. R. R. Co.* 572 (575).

At El Paso justifies lower rates than to Santa Rosa, a shorter distance intermediate point. *Moise Bros. Co. v. C. R. I. & P. Ry. Co.* 550.

Chicago has advantage of more intense railroad competition than Indianapolis. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 276 (282).

At New York justifies longer free time for unloading of flour than at Philadelphia. *Brey v. P. R. R. Co.* 497.

Rates on small packages made in competition with mails. *Sanford v. Western Express Co.* 32.

COMPETITIVE RATE.

No justification for requiring shippers at one point to forward via circuitous routes to protect rates of other initial carriers from a farther distant point. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 56 (69).

No requirement that charges of one carrier shall always be exactly equal to those of competing carrier. Law requires that charges of each shall be reasonable. What is reasonable for one might not be reasonable for another. *Swift & Co. v. C. & A. R. R. Co.* 426 (429).

Carrier not guilty of discrimination because it does not afford as favorable rates as others serving different territory, though products carried by each are brought to the same market. *Chicago Lumber & Coal Co. v. Tioga Southeastern Ry. Co.* 323.

COMPETITIVE RATE—Continued.

Because delivering carrier sees fit to state that it will protect rate made by its competitor, but fails to do so, Commission can not hold that such lower rate is necessarily reasonable. *De Camp Bros. v. So. Ry. Co.* 144.

Unless rates from Chicago are fixed on competitive basis demand in St. Paul territory for iron is met from Pittsburg by lake-and-rail lines. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 276 (282).

Rates from St. Louis to St. Paul are fixed on competitive basis to meet rates from Atlantic seaboard by rail-and-water and all-rail routes. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 276 (281).

Low state concentration rate not competitive with interstate rate complained of; therefore it can not be said that one compels the other. *Railroad Commission of Wisconsin v. C. & N. W. Ry. Co.* 85 (91).

Competing line meets rate long maintained. If compensatory for long line it is compensatory for shorter line. *Railroad Commissioners of Florida v. S. A. L. Ry.* 1 (5).

Carrier may, for competitive reasons, voluntarily do things which it may not lawfully be compelled to do. *Swift & Co. v. C. & A. R. R. Co.* 426 (428).

COMPLAINANT. See **APPEARANCE.**

COMPLAINT.

Leave to amend petition asked, but no amendment filed. *Bluff City Oil Co. v. St. L. I. M. & S. Ry. Co.* 296 (297).

CONCENTRATING RATES.

By increasing size and regularity of shipments, they seem to be of advantage to carriers as well as shippers. *Railroad Commission of Wisconsin v. C. & N. W. Ry. Co.* 85 (90).

CONCESSION.

Facilities. *Pyro Art Club v. U. S. Express Co.* 37.

Rates. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 142, 276; *Reddick v. Mich. Cent. R. R. Co.* 492; *Watson Co. v. L. S. & M. S. Ry. Co.* 124.

CONGESTION.

At Produce Yards in Pittsburg brought about storage charges. *Wilson Produce Co. v. Pa. R. R. Co.* 116 (119).

CONSIGNEE. See **PERSONALITY.**

CONSOLIDATED SHIPMENTS.

Tariff provides that under certain circumstances two or more packages forwarded by one company, from the same point, on the same day, to one consignee, whether from one or more shippers, must be aggregated as to weights if a lower charge is thereby made. Reparation awarded on shipments on which this rule was not applied. *California Commercial Assn. v. Wells Fargo & Co.* 458.

CONSOLIDATION. See **ANTITRUST.**

CONSTRUCTION OF ACT.

Act should be so construed as to leave to carriers greatest possible latitude in the management of their business, consistent with proper protection of the public. *In re Contracts of Express Companies*, 246 (249).

We must give to the law such interpretation as we think Congress would apply in each individual case, taking its mind from the language it has used. *Enterprise Fuel Co. v. Pa. R. R. Co.* 219 (223).

CONSTRUCTION OF TARIFF. See **TARIFF.**

CONTRACT.

Congress has power to regulate commerce among the states, and no contract between corporation which handles that commerce and party for whom it is handled can interfere with complete exercise of that power. *In re Contracts of Express Companies*, 246 (253).

CONTRACT—Continued.

Any contract for free transportation of men and materials of express companies to points off line of carrier, though valid when entered into, must become invalid under operation of the act. *In re Contracts of Express Companies*. 246 (253).

If contract was made with defendants for lower charge than legally established rate, such contract was not binding, and its violation furnishes no ground for redress under the act. *Ames Brooks Co. v. Rutland R. R. Co.* 479.

Private contracts can have no effect upon application of lawful tariff governing a shipment. *Interstate Remedy Co. v. American Express Co.* 436 (437).

COOPERAGE. See **COMMODITIES**.

COOPERAGE STOCK. See **COMMODITIES**.

CORN. See **COMMODITIES**.

CORN STARCH. See **COMMODITIES**.

COST OF OPERATION.

Reductions (in rates) are in the net revenues of the (express) company, since cost of operation must remain the same. *Maricopa County Commercial Club v. Wells Fargo & Co.* 182 (185).

Decreases as size of mill increases. *Valley Flour Mills v. A. T. & S. F. Ry. Co.* 73 (74).

COST OF PRODUCTION.

Fertilizer, less at Memphis, being nearer Atlantic coast and phosphate-rock fields than Shreveport, La. *Virginia-Carolina Chemical Co. v. St. L. S. W. Ry. Co.* 49 (50).

The freight rate affects in a degree the price at which the garment can be sold. *Association of Union Made Garment Manufacturers v. C. & N. W. Ry. Co.* 405 (408).

COST OF SERVICE.

A mere comparison of revenue per ton per mile, even when showing higher from complainant's mines, not conclusive as applied in a country where nature has interposed such obstacles as to make operating conditions so dissimilar. *Grand Junction Mining & Fuel Co. v. Colo. Mid. Ry. Co.* 452 (457).

Cost of transporting matter to and from point on branch line increased, and rates ought to be somewhat higher for that reason. *Maricopa County Commercial Club v. Wells Fargo & Co.* 182 (184).

Difficult and expensive operation of roads should be passed upon in considering reasonableness of rates involved. *Cedar Hill Coal & Coke Co. v. Colo. & So. Ry. Co.* 387 (391).

Comparative cost of services to carriers can not be made the sole basis of rate making. *Duncan & Co. v. N. C. & St. L. Ry. Co.* 590 (593).

COTTON. See **COMMODITIES**.

COTTON BAGGING. See **COMMODITIES**.

COTTON PIECE GOODS. See **COMMODITIES**.

COTTON SEED. See **COMMODITIES**.

CROSS-TIES.

Rates on that exceed the rates on lumber of the same character as the ties are unreasonable. *Beekman Lumber Co. v. C. R. I. & P. Ry. Co.* 528.

Should not exceed rate on lumber. *MacGillis & Gibbs Co. v. C. & E. I. R. R. Co.* 40.

CULLET. See **COMMODITIES**.

CYPRESS LUMBER. See **COMMODITIES**.

DAIRY PRODUCTS. See **COMMODITIES**.

DAMAGES. See also **REPARATION**.

Wrong ticket issued, not permitting stop-over. Claim for damages for loss of employment at stop-over point too speculative for order of Commission or judgment of court of law. *Allender v. C. B. & Q. R. R. Co.* 103.

DATE.

Date of original shipment determines rights, privileges, and obligations attaching to that shipment throughout its transportation. *Interstate Remedy Co. v. American Express Co.* 436.

DEFAULT.

On account of nonappearance of defendants, and in absence of any showing tending to justify advance, it will be presumed unreasonable; reparation ordered on shipments made. *Sunderland Bros. Co. v. P. M. R. R. Co.* 450 (451).

DELIVERY.

Express packages free at Chicago. *Pyro Art Club v. U. S. Express Co.* 37.

DEMURRAGE.

After allowing reasonable time to unload, carrier may impose such charges for further detention as will lead to speedy release of its equipment. *Wilson Produce Co. v. Pa. R. R. Co.* 116.

Coal, detained at St. George, Staten Island, N. Y., not found unreasonable. *Hutchinson-McCandlish Coal Co. v. B. & O. R. R. Co.* 360.

DENSITY. See also **VOLUME.**

Greater density of population on east side (Mississippi River) and development is such that volume of traffic exceeds that on west side. This fact greatly contributes to ability of lines to handle business with greater advantage and profit. *Chicago Lumber & Coal Co. v. Tioga Southeastern Ry. Co.* 323 (328).

DIFFERENTIALS.

With particular force as applied to grouped points of origin and grouped points of destination, differentials either above or below rates from any given point become less and less important as distance of ultimate destination increases. *Williams Co. v. V. S. & P. Ry. Co.* 482 (487).

Diminish with increasing distance and vanish when mileage on which they are based becomes inconsiderable in proportion to total mileage from basing point to destination. *Williams Co. v. V. S. & P. Ry. Co.* 482.

Rates, Chicago to Missouri River, made by adding arbitrary differentials to locals from Mississippi River to Missouri River. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry.* 56 (58).

Lumber and other forest products from Idaho and Montana to Pembina-Port Arthur line, under lumber rates from Spokane group. *Kalispell Lumber Co. v. G. N. Ry. Co.* 164.

Above St. Louis on traffic from Chicago to beyond. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 254.

ESTABLISHED ON. Lumber, Missoula District to North Dakota points under Spokane group. *Big Blackfoot Milling Co. v. N. P. Ry. Co.* 173.

Wheat and flour, Kansas points to Phoenix, Ariz. *Valley Flour Mills v. A. T. & S. F. Ry. Co.* 73.

DINING CAR.

Discrimination in accommodations against colored passengers not found to exist. *Gaines v. S. A. L. Ry.* 471.

DISCRETION.

One thing for carrier to voluntarily reduce rates not excessive, for the service performed, solely to meet competitive and commercial conditions, but a different thing for Commission to compel such reductions regardless of transportation conditions. *Chicago Lumber & Coal Co. v. Tioga Southeastern Ry. Co.* 323 (334).

It is the privilege of a carrier to meet water competition, but the existence of such competition is not in itself a ground upon which a shipper may demand a lower rate. *Lindsay Bros. v. B. & O. S. W. R. R. Co.* 6.

Carriers may voluntarily do many things which they may not lawfully be compelled to do. *Commercial Club of Hattiesburg v. Alabama Great Southern R. R. Co.* 534.

DISCRETION—Continued.

Carrier may for competitive reasons voluntarily do things which it may not lawfully be compelled to do. *Swift & Co. v. C. & A. R. R. Co.* 426 (428).

Railroads are authorized to meet or not to meet competition, as to them seems to their interest. *La Salle Paper Co. v. Mich. Cent. R. R. Co.* 149.

DISCRIMINATION.

When traffic from two territories served by different lines is carried to a point on a common connecting line under joint rates published in a single tariff to which all three lines are parties, a through line or group of lines is formed which serves both territories and makes discrimination possible. *Indiana Steel & Wire Co. v. C. R. I. & P. Ry. Co.* 155.

If Santa Fe should make to Colo. & S. E. a division greater on traffic coming from that road than from Colo. & So., that would amount to preference to Victor Fuel Co., owners of Colo. & S. E. Defendants therefore required to state divisions agreed upon if joint rates are established. *Cedar Hill Coal & Coke Co. v. A. T. & S. F. Ry. Co.* 402 (404).

If carriers insist upon making preferential rates to each other they may confidently expect such voluntary action on their part will be accepted and taken as evidence of unreasonableness of higher rates which they may undertake to enforce against other shippers. *Hitchman Coal & Coke Co. v. B. & O. R. R. Co.* 512.

Not unlawful for defendants to meet in rates from C. F. A. territory and from Atlantic ports competition created at Meridian and Jackson by the lines from St. Louis and by the Illinois Central from Louisville without also giving the same rates to Hattiesburg. *Commercial Club of Hattiesburg v. Alabama Great Southern R. R. Co.* 534 (546).

The freight is so small an item in the cost to the retail dealer or the consumer of both woolen and cotton garments that this does not seem to produce any practical effect. While in fact the discrimination exists, it is not sufficient to become obvious. *Association of Union Made Garment Manufacturers v. C. & N. W. Ry. Co.* 405 (408).

Commission can not indulge in speculation as to motives which actuate carriers in fixing an adjustment of freight rates. We can only determine whether the rates in question are unreasonable or unjustly discriminatory. *Grand Junction Mining & Fuel Co. v. Colo. Mid. Ry. Co.* 452 (456).

If complainant labored under some form of discrimination, or rates were so high as to unduly burden movement of traffic, Commission's duty to interfere, though that did involve reduction of rates. *Association of Union Made Garment Manufacturers v. C. & N. W. Ry. Co.* 405 (409).

Statute requires carriers to publish their tariffs and to adhere to those tariffs. In no other way could discriminations which have existed be prevented. In enforcement of that statute Commission has no discretion. *Ames Brooks Co. v. Rutland R. R. Co.* 479 (481).

Carrier not guilty of discrimination because it does not afford as favorable rates as others serving a different territory, though products carried by each are brought to the same market. *Chicago Lumber & Coal Co. v. Tioga Southeastern Ry. Co.* 323.

Principle in *Edwards case*, 12 I. C. C. 247, that common carriers may not, in the accommodations which they furnish to each, unjustly discriminate between white and colored passengers paying same fare, reaffirmed. *Cozart v. So. Ry. Co.* 226.

If water competition at one point compels carrier to discriminate against a point not so favorably situated, discrimination must not be greater than dissimilarity of circumstances demand. *Planters Gin & Compress Co. v. Y. & M. V. R. R. Co.* 131 (133).

Commission has always regarded reconsignment as a privilege, not a right to be demanded by shippers, and has consistently refused to extend the same except to correct unjust discrimination. *Cedar Hill Coal & Coke Co. v. Colo. & So. Ry. Co.* 387.

DISCRIMINATION—Continued.

Carrier may not by reason of conducting market place in Pittsburg use its power as a common carrier to discriminate against or in favor of Pittsburg or any other community which it serves. *Wilson Produce Co. v. Pa. R. R. Co.* 116 (122).

Water competition at given point may render circumstances and conditions dissimilar and justify discrimination against points where such competition is not controlling. *Planters Gin & Compress Co. v. Y. & M. V. R. R. Co.* 131 (133).

Commission does not feel justified in initiating or extending the application of reconsignment privileges unless deemed necessary to correct unjust discrimination. *Sunnyside Coal Mining Co. v. D. & R. G. R. R. Co.* 558.

Lower proportionals from points served by foreign carriers no basis for charge of discrimination against complaining point served by other carriers. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 56 (66).

The Commission should exercise care to prevent undue discrimination as the result of any conclusion reached with respect of rates to any particular point. *Board of Trade of Winston-Salem v. N. & W. Ry. Co.* 12 (18).

Lower rate to more distant point on the same line was in violation of fourth section of act, and therefore unlawful. It might also be declared unlawful because discriminatory. *Sunderland Bros. Co. v. C. & N. W. Ry. Co.* 433 (434).

Whether or not a discrimination shall be removed is not measured by its amount, whether large or small, but by a determination of whether or not it is undue. *Fort Dodge Commercial Club v. Ill. Cent. R. R. Co.* 572 (581).

Accidents occur where all passengers are deprived of accommodations usually afforded them, but that fact could not be foundation for finding of unjust discrimination. *Cozart v. So. Ry. Co.* 226 (231).

Fact that complainant has been prosperous, although a matter to be considered, does not conclusively show that rates are not discriminatory. *Hitchman Coal & Coke Co. v. B. & O. R. R. Co.* 512 (519).

Payment of so-called "elevation allowances" to dealers in hay, grain and grain products at Nashville, Tenn., is an undue and unlawful discrimination. *Duncan & Co. v. N. C. & St. L. Ry. Co.* 690.

Carrier can not discriminate except as between those whom it serves or whom it may lawfully be required to serve. *Chicago Lumber & Coal Co. v. Tioga Southeastern Ry. Co.* 323 (332).

Points on one line compared with points on a parallel branch of same line equally distant from a concentrating point. *Bartling Grain Co. v. Mo. Pac. Ry. Co.* 494.

Reparation awarded because of undue discrimination in elevator allowances in favor of complainant's competitors. *Merriam & Holmquist v. U. P. R. R. Co.* 337.

The act was intended to prohibit undue discrimination against localities as well as persons. *Railroad Commissioners of Florida v. S. A. L. Ry.* 1 (2).

Granting to some and withholding from other products of grain milling-in-transit privileges. *Douglas & Co. v. C. R. I. & P. Ry. Co.* 232.

Competition of carriers at New York justifies longer free time in unloading flour than at Philadelphia. *Brey v. P. R. R. Co.* 497.

Alleged, but from lack of one party, rates found unreasonable. *Cedar Hill Coal & Coke Co. v. A. T. & S. F. Ry. Co.* 402 (403).

Against colored passengers not shown to exist. *Gaines v. S. A. L. Ry.* 471.

DISCRIMINATION—CLASSIFIED LIST.**ARTICLES.**

Association of Union Made Garment Mfrs. v. C. & N. W. Ry. Co. 405.

Douglas & Co. v. C. R. I. & P. Ry. Co. 232.

FACILITIES.

Cozart v. So. Ry. Co. 226.

Gaines v. S. A. L. Ry. 471.

DISCRIMINATION—CLASSIFIED LIST—Continued.

LOCALITIES.

- Avery Mfg. Co. *v.* A. T. & S. F. Ry. Co. 20.
 Bartling Grain Co. *v.* Mo. Pac. Ry. Co. 494.
 Brey *v.* P. R. R. Co. 497.
 Commercial Club of Hattiesburg *v.* Alabama Great Southern R. R. Co. 534.
 Delray Salt Co. *v.* C. St. P. M. & O. Ry. Co. 507.
 Duncan & Co. *v.* N. C. & St. L. Ry. Co. 590.
 Fort Dodge Commercial Club *v.* Ill. Cent. R. R. Co. 572.
 Indiana Steel & Wire Co. *v.* C. R. I. & P. Ry. Co. 155.
 Indianapolis Freight Bureau *v.* C. C. C. & St. L. Ry. Co. 56, 142, 254, 276.
 Planters Gin & Compress Co. *v.* Y. & M. V. R. R. Co. 131.
 Railroad Commissioners of Florida *v.* S. A. L. Ry. 1.
 Sunderland Bros. Co. *v.* C. & N. W. Ry. Co. 433.
 Virginia-Carolina Chemical Co. *v.* St. L. S. W. Ry. Co. 49.
 Wilson Produce Co. *v.* P. R. R. Co. 116.

PERSONS.

- Cozart *v.* So. Ry. Co. 226.
 Gaines *v.* S. A. L. Ry. 471.
 Merriam & Holmquist *v.* U. P. R. R. Co. 337.

DISTANCE.

- Rates made with respect to vast groups, and adjustments with respect to crossings, such as the Mississippi River crossings, extending more than 700 miles, can not be considered solely from the standpoint of mileage from nearest air-line gateway to a particular section of the group. *Williams Co. v. V. S. & P. Ry. Co.* 482 (484).
- Blanket or group rates in many cases are of great advantage to the public without serious injustice to any interest, though there is of necessity more or less disregard of distance and varying degrees of inequality. *Chicago Lumber & Coal Co. v. Tioga Southeastern Ry. Co.* 323 (324).
- While we are not to be understood as intimating that substantial differences in distance are not to be given consideration, we are not willing to accept the theory of rate construction based purely on distances. *Kansas City Transportation Bureau v. A. T. & S. F. Ry. Co.* 195 (203).
- With particular force as applied to grouped points of origin and grouped points of destination, differentials either above or below rates from any given point become less and less important as distance of ultimate destination increases. *Williams Co. v. V. S. & P. Ry. Co.* 482 (487).
- Giving to Kansas City all of the advantage that would come from a mileage adjustment would give it a monopoly of territory in which Omaha now freely competes. *Kansas City Transportation Bureau v. A. T. & S. F. Ry. Co.* 195 (203).
- It may be lawful for carrier to give equal access to markets to localities of dissimilar distances where such distances involve no material increase in the transportation expense. *Avery Manufacturing Co. v. A. T. & S. F. Ry. Co.* 20 (24).
- If strictly distance rates were applied to grain moving from points of origin it is apparent that at a certain distance the rate would be prohibitive. *Kansas City Transportation Bureau v. A. T. & S. F. Ry. Co.* 195 (204).
- Differentials diminish with increasing distance and vanish when mileage on which they are based becomes inconsiderable in proportion to total mileage from basing point to destination. *Williams Co. v. V. S. & P. Ry. Co.* 482.
- Rates on Indianapolis traffic for haul from Mississippi to Missouri River should be more than on traffic from Atlantic seaboard. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 56 (64).

DISTANCE—Continued.

Circumstances and conditions at Beecher Lake, Wis., to Chicago same as from Pembine, Wis., farther-distant point; rates on laths should be the same. *Neufeld v. C. M. & St. P. Ry. Co.* 26 (27).

So small a difference as 0.6 mile in distance is disregarded in a haul of 207 miles and should be deemed a negligible quantity. *Railroad Commissioners of Florida v. S. A. L. Ry.* 1 (2).

Where distances are considerable rates from all three points complained of may properly be the same. *Maricopa County Commercial Club v. Wells Fargo & Co.* 182.

Differences in rates from two points of origin disappear as most distant common market is approached. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 254 (264).

Many potent considerations might far outweigh a claim of right founded only on geographic location. *Fort Dodge Commercial Club v. Ill. Cent. R. R. Co.* 572 (582).

Chicago much shorter distance in reaching St. Paul and Winona than Indianapolis. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 276 (282).

Carrier is to take into account in making rates, amongst others, questions of distance. *Avery Manufacturing Co. v. A. T. & S. F. Ry. Co.* 20 (24).

On through shipments differences in distance are not important in considering rates. *Avery Manufacturing Co. v. A. T. & S. F. Ry. Co.* 20 (22).

This system (of group rates) could not exist if distance were made the primary factor. *Hitchman Coal & Coke Co. v. B. & O. R. R. Co.* 512 (520).

In view of length of haul, unreasonable to add 9½ cents for haul of only 30 miles farther. *Philip v. C. M. & St. P. Ry. Co.* 418 (419).

As mileage increases total cost increases, but cost per ton per mile decreases. *Williams Co. v. V. S. & P. Ry. Co.* 482 (487).

Important consideration in fixing rates. *City of Spokane v. N. P. Ry. Co.* 179 (180).

DISTANCE TARIFFS.

To be applied only when no other rates are provided, or when, under special provision in tariff therefor, they make lower than specific rate shown in same tariff. *Lee-Warren Milling Co. v. C. R. I. & P. Ry. Co.* 422 (423).

DIVISION.

If Santa Fe should make to Colo. & S. E. a division greater on traffic coming from that road than from Colo. & So., that would amount to preference to Victor Fuel Co., owners of the Colo. & S. E. Defendants therefore required to state division agreed upon if joint rates are established. *Cedar Hill Coal & Coke Co. v. A. T. & S. F. Ry. Co.* 402 (404).

In division of rate from Chicago to Oklahoma roads performing haul to St. Louis receive greater proportion than is expressed by differential. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 254 (263).

Unwillingness to divide revenue on traffic originating off line that defendant could originate on its line untenable as reason for withdrawal of joint rates. *Delray Salt Co. v. C. St. P. M. & O. Ry. Co.* 507 (511).

Divisions of through rate furnish no fair or just criterion by which to measure intermediate local rates on the same line of transportation. *Board of Trade of Winston-Salem v. N. & W. Ry. Co.* 12 (16).

Commission unwilling ordinarily to accept a division of a through rate as a basis upon which to test the reasonableness of a local rate. *Moise Bros. Co. v. C. R. I. & P. Ry. Co.* 550 (554).

Through route and joint rates ordered may be apportioned on any basis for divisions which carriers may deem proper. *Northern Coal & Coke Co. v. Colo. & So. Ry. Co.* 369 (373).

DIVISION—Continued.

Rate from Marshall, Tex., to East St. Louis, part of through rate to Biddeford, Me., found unreasonable. *Pepperell Manufacturing Co. v. Texas So. Ry. Co.* 353.

Through rates via Portland should be same as in effect via Nor. Pac. and connections. No opinion as to divisions. *In re Through Passenger Routes* 300 (310).

Left for the present for the defendants to determine. *Enterprise Fuel Co. v. Pa. R. R. Co.* 219 (225).

Local fare is not of necessity measure of division. *In re Through Passenger Routes* 300 (310).

DOMESTIC RATE.

Export commodity rate and minimum weight unreasonable when applied to consignments on which charges would be less if assessed at higher domestic rate and lower minimum. *Newark Machine Co. v. P. C. C. & St. L. Ry. Co.* 291.

DREDGING-MACHINE PARTS. See COMMODITIES.**DRIED FRUIT. See COMMODITIES.****EARNINGS. See NET EARNINGS.**

Most satisfactory comparison to ascertain whether relative injustice is being done one section against another, or one commodity against another, is through earnings per car. *Ozark Fruit Growers Asso. v. St. L. & S. F. R. R. Co.* 106 (114).

Per car at less rate on high minimum so nearly same as earnings at higher rate on less minimum, Commission not justified in reducing higher rate. *La Salle Paper Co. v. Mich. Cent. R. R. Co.* 149 (150).

ELEVATOR ALLOWANCE.

Payment of so-called "elevation allowance" to dealers in hay, grain, and grain products at Nashville, Tenn., is an undue and unlawful discrimination. *Duncan & Co. v. N. C. & St. L. Ry. Co.* 590.

Reparation awarded because of undue discrimination in favor of complainant's competitors. *Merriam & Holmquist v. U. P. R. R. Co.* 337.

ELEVATOR CHARGE.

Where included in rate, tariff invariably so specifies, and should so specify according to sixth section. *Ames Brooks Co. v. Rutland R. R. Co.* 479 (481).

Not quoted, but published, and it was duty of defendants to apply rate so published and in effect. *Ames Brooks Co. v. Rutland R. R. Co.* 479.

ELEVATOR GUIDES. See COMMODITIES.**ELM HOOPS. See COMMODITIES.****EMERGENCY.**

Accidents occur where all passengers are deprived of accommodations usually accorded them, but that fact could not be foundation for finding of unjust discrimination. *Cozart v. So. Ry. Co.* 226 (231).

EMPTY OIL BARRELS. See COMMODITIES.**EQUAL TREATMENT.**

It is difficult to determine that one theory is reasonable and right for one manufacturer or shipper and another theory is reasonable and right for another manufacturer or shipper under substantially similar circumstances and conditions. *Douglas & Co. v. C. R. I. & P. Ry. Co.* 232 (242).

Carrier must hold itself impartially as between shippers and give to each equal terminal facilities and service. *Enterprise Fuel Co. v. Pa. R. R. Co.* 219 (224).

QUALIZING RATES. See also MEETING THE RATE.

Blanket or group rates in many cases are of great advantage to the public without serious injustice to any interest, though there is of necessity more or less disregard of distance and varying degrees of inequality. *Chicago Lumber & Coal Co. v. Tioga Southeastern Ry. Co.* 323 (324).

EQUALIZING RATES—Continued.

It is an entirely erroneous assumption that where there are two or more lines with different rates between two points a shipper may secure the application of the lowest rate by either of such lines regardless of which one he uses. *Hill & Webb v. M. K. & T. Ry. Co.* 569 (570).

Movement of traffic encouraged and increased when carriers adjust charges to meet mercantile interests, but they are not obliged to equalize the value of commodities in their final distribution. *Chicago Lumber & Coal Co. v. Tioga Southeastern Ry. Co.* 323.

A carrier should not be required to equalize access to markets for all engaged in a common business if the shippers are differently situated and are not entitled to the same rates. *Avery Manufacturing Co. v. A. T. & S. F. Ry. Co.* 20 (24).

Commission can not order reduction in rates to enable certain factories to overcome natural advantages enjoyed by competitive producing points. *Virginia-Carolina Chemical Co. v. St. L. S. W. Ry. Co.* 49 (52).

From geographical standpoint, Kalispell and Missoula groups are corresponding lumber-producing sections and for that reason should take same rates. *Big Black-foot Milling Co. v. N. P. Ry. Co.* 173 (175).

It is general rate-making policy in this territory that rates to Chicago and Milwaukee shall be equal. *Railroad Commission of Wisconsin v. C. & N. W. Ry. Co.* 85 (89).

Commission shall not undertake to equalize commercial conditions. *Valley Flour Mills v. A. T. & S. F. Ry. Co.* 73 (76).

ERROR. See also **TARIFF.**

Carrier's agent furnished ticket not permitting stop-over; claim for damages for loss of employment at stop-over point too speculative. *Allender v. C. B. & Q. R. R. Co.* 103.

Wrong rate quoted. Every consideration of justice demands that charge should be repaid. But such order could not be enforced. *Ames Brooks Co. v. Rutland R. R. Co.* 479 (481).

ESTIMATED WEIGHT.

Cabbages, based on average weight per crate. *Davies v. Ill. Cent. R. R. Co.* 376.

EVIDENCE.

Where there is conflict in testimony as to date of movement, rate lawfully in effect, route taken, size of car actually used, or weight of shipment, official records of carrier may be resorted to in arriving at a correct conclusion. *Wheeler Lumber, Bridge & Supply Co. v. So. Pac. Co.* 547 (548).

Stipulated that evidence in another case be taken and considered as offered in this case so far as applicable. *Merriam & Holmquist v. U. P. R. R. Co.* 337 (338).

In administering law, Commission must be observant of weight to be given evidence adduced before it. *Sanford v. Western Express Co.* 32 (36).

Complaint dismissed for want of proof to sustain allegation. *Wheeler Lumber, Bridge & Supply Co. v. So. Pac. Co.* 547.

EX-LAKE.

Grain, Ogdensburg, N. Y., to Boston, Mass., for export. *Ames Brooks Co. v. Rutland R. R. Co.* 479.

EXPORT RATE.

Export commodity rate and minimum weight unreasonable when applied to consignments on which charges would be less if assessed at higher domestic rate and lower minimum. *Newark Machine Co. v. P. C. C. & St. L. Ry. Co.* 291.

Agricultural implements, Minneapolis to New York. *Minneapolis Threshing Machine Co. v. C. St. P. M. & O. Ry. Co.* 193.

EXPRESS COMPANIES.

Contracts for free transportation of men and material over railroads. See **FREE TRANSPORTATION.**

Free delivery in Chicago extended. *Pyro Art Club v. U. S. Express Co.* 37.

EXPRESS RATES.

Between Phoenix, Mesa, and Tempe, Ariz., and points in California, Arizona, New Mexico, Colorado, and Kansas found unreasonable. *Maricopa County Commercial Club v. Wells Fargo & Co.* 182.

Small live animals in secure containers. *Davis v. West Jersey Express Co.* 214.

Through rate exceeded combination of locals. *U. S. v. Adams Express Co.* 394.

New York and St. Paul to Courtenay, N. Dak. *Sanford v. Western Express Co.* 32.

FACILITIES. See also **COLORED PASSENGERS.**

Produce yards in Pittsburg, for handling the fruit, in congested condition. *Wilson Produce Co. v. Pa. R. R. Co.* 116 (118).

FENCE POSTS. See **COMMODITIES.****FERTILIZER.** See **COMMODITIES.****FIR LUMBER.** See **COMMODITIES.****FIXING RATES.** See also **MEASURE OF RATE.**

The Commission moves with great caution in condemning a rate or practice and does so only when the facts before it amply warrant such action. *Sanford v. Western Express Co.* 32.

FLOUR. See **COMMODITIES.****FORMAL COMPLAINT.**

Made necessary by attitude of carriers. *Stone-Ordean-Wells Co. v. C. B. & Q. R. R. Co.* 30 (31).

FORMAL HEARING. See **HEARING.****FREE DELIVERY.**

Express packages in Chicago. *Pyro Art Club v. U. S. Express Co.* 37.

FREE TIME.

Competition at New York justifies longer free time for unloading of flour than at Philadelphia. *Brey v. P. R. R. Co.* 497.

FREE TRANSPORTATION.

Railway company may lawfully transport men and supplies of express company without reference to any tariff provision when employed or used in the business of the express company upon the line of railway itself, and an express company may lawfully transport packages of a railway company between two points upon that line of railway without reference to tariff rates. *In re Contracts of Express Companies*, 246.

A railway company may not lawfully transport men and supplies of an express company when employed or used in the business of that company at points not on the line of railway, and an express company may not lawfully transport for a railway packages between points on its route but not on that particular line of railway. *In re Contracts of Express Companies*, 246.

FRESH MEATS. See **COMMODITIES.****FRUIT.** See **COMMODITIES.****FURNACES.** See **COMMODITIES.****FURNITURE.** See **COMMODITIES.****FUSE.** See **COMMODITIES.****FUTURE RATE.** See **MAINTENANCE OF RATE.****GARMENTS.** See **COMMODITIES.****GASOLINE.** See **COMMODITIES.****GINGER ALE.** See **COMMODITIES.****GLASS.** See **COMMODITIES.****GLASS BOTTLES.** See **COMMODITIES.****GRADED RATES.**

Differences from two points of origin disappear as most distant common market is approached. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 254 (264).

GRADUATE RATES.

Express shipments, New York and St. Paul to Courtenay, N. Dak. *Sanford v. Western Express Co.* 32.

GRAIN. See **COMMODITIES.**

GRAPE BASKETS. See **COMMODITIES.**

GREASE. See **COMMODITIES.**

GROCERIES. See **COMMODITIES.**

GROUND IRON ORE. See **COMMODITIES.**

GROUP RATES.

Rates made with respect to vast groups, and adjustments with respect to crossings, such as the Mississippi River crossings, extending more than 700 miles, can not be considered solely from the standpoint of mileage from nearest air-line gateway to a particular section of the group. *Williams Co. v. V. S. & P. Ry. Co.* 482 (484).

With particular force as applied to grouped points of origin and grouped points of destination, differentials either above or below rates from any given point become less and less important as distance of ultimate destination increases. *Williams Co. v. V. S. & P. Ry. Co.* 482 (487).

In transportation of low-grade commodities that move in bulk and in large quantities it is a long-established custom to group or blanket a number of stations or a large expanse of territory. *Kansas City Transportation Bureau v. A. T. & S. F. Ry. Co.* 195 (204).

In many cases are of great advantage to public without serious injustice to any interest, though there is of necessity more or less disregard of distance and varying degrees of inequality. *Chicago Lumber & Coal Co. v. Tioga Southeastern Ry. Co.* 323 (324).

Are largely made with respect of business as distinguished from transportation conditions, and is done with a reasonable disregard of distance and with close attention to commercial conditions. *Avery Manufacturing Co. v. A. T. & S. F. Ry. Co.* 20 (24).

A group territory must have certain and definite boundary lines, and when once they have been established their extension should not be forced unless clearly warranted. *Hitchman Coal & Coke Co. v. B. & O. R. R. Co.* 512 (520).

We can not deny relief to typical point in a group for reason that other points in like situation may be entitled to a similar order. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 56 (71).

Commission can not find that, as a matter of law, Hattiesburg must be grouped with Jackson and Meridian. *Commercial Club of Hattiesburg v. Alabama Great Southern R. R. Co.* 534.

It is not uncommon to make large groups of distant points. *Moise Bros. Co. v. C. R. I. & P. Ry. Co.* 550 (556).

Kalispell district to points on Pembina-Port Arthur line. *Kalispell Lumber Co. v. G. N. Ry. Co.* 164.

HAY. See **COMMODITIES.**

HEARING.

Made necessary by attitude of carriers. *Stone-Ordean-Wells Co. v. C. B. & Q. R. R. Co.* 30 (31).

HOLDING COMPANY.

While Pennsylvania Railroad Company owns most of the stock and therefore controls the Pennsylvania Company, operations of the two are kept entirely distinct, and case must be disposed of as though there were no common interest in the management of the two. *Kurtz v. Penn. Co.* 410.

HOOPS. See **COMMODITIES.**

HOUSEHOLD GOODS. See **COMMODITIES.**

HULLERS. See **COMMODITIES.**

ICING.

Shipper entitled to icing of shipment which actually weighed less than minimum fixed, provided transportation charges are paid upon full amount of prescribed minimum. *Swift & Co. v. C. & A. R. R. Co.* 426 (430).

Tariff rule fixing 15,000 pounds minimum carload of dairy products, poultry, fresh meats, etc., for which carrier will furnish icing at its expense not found unreasonable. *Swift & Co. v. C. & A. R. R. Co.* 426.

IMAGINARY WEIGHT.

Shipper entitled to icing of shipment which actually weighed less than minimum fixed, provided transportation charges are paid upon full amount of prescribed minimum. *Swift & Co. v. C. & A. R. R. Co.* 426 (430).

INDUSTRIAL LINE.

Colo. & S. E. Ry. owned by Victor Fuel Co. and establishes joint rates with Santa Fe by trackage agreement over intermediate line. *Cedar Hill Coal & Coke Co. v. A. T. & S. F. Ry. Co.* 402.

INDUSTRIAL RATE.

Where plant has been established and money invested on faith of certain rates and conditions carrier may not increase those rates to serious disadvantage of such investment *without good cause or reason*. *Douglas & Co. v. C. R. I. & P. Ry. Co.* 232 (237).

A carrier has the right to consider the conditions under which industries on its lines in the same general territory with other industries are compelled to conduct their business. *Avery Manufacturing Co. v. A. T. & S. F. Ry. Co.* 20 (24).

Fertilizer, Shreveport to Arkansas points, established business. *Virginia-Carolina Chemical Co. v. St. L. S. W. Ry. Co.* 49 (50).

INFORMAL COMPLAINTS.

No reparation is or should be awarded on informal proceedings which would not be awarded under same set of facts in a contested case and in face of defendant's opposition instead of its admission. *Swift & Co. v. C. & A. R. R. Co.* 426 (428).

Stopped running of statute of limitations. *Otis Elevator Co. v. C. G. W. Ry. Co.* 502 (503).

Sufficient to stop running of statute of limitations. *Kaye & Carter Lumber Co. v. Minn. & Int. Ry. Co.* 285 (286).

INSTRUCTIONS.

In absence of specific routing instructions, a carrier is obliged ordinarily to carry via route taking lowest rate. However, where shipper directs routing, it is duty of carrier to follow instructions. *Preston v. C. & O. Ry. Co.* 565.

Shipment delivered without instructions. Duty of initial line to route via junction which should have made lowest combination of locals between origin and destination. *Hill & Webb v. M. K. & T. Ry. Co.* 569.

Shipper gave no specific routing instructions, and it was duty of carriers to transport via route carrying lowest rate. *Marshall & Michel Grain Co. v. St. L. & S. F. R. R. Co.* 385 (386).

Shipper routed via expensive route to test market at intermediate point; no refund on claim for misrouting. *Council v. St. L. & S. F. R. R. Co.* 188.

Shipper gave none, and carrier disregarded its duty to forward via cheapest reasonable available route. *Hendrickson Lumber Co. v. K. C. S. Ry. Co.* 129.

Shipper gave none, and shipment forwarded via route with higher rate than another available route. *Noble v. St. L. & S. F. R. R. Co.* 186.

None, except as to delivering carrier. *Thatcher Manufacturing Co. v. N. Y. C. & H. R. R. R. Co.* 126 (127).

INTENT.

To take possession of shipments at intermediate point and to reconsign to avoid payment of higher through rate can not be allowed to control. What was actually done must govern. *Wood Butter Co. v. C. C. C. & St. L. Ry. Co.* 374 (375).

Tariffs are to be construed according to their language. Intent of framers does not control. *Newtom Gum Co. v. C. B. & Q. R. R. Co.* 341.

INTEREST.

While Pennsylvania Railroad Company owns most of the stock and therefore controls the Pennsylvania Company, operations of the two are kept entirely distinct, and case must be disposed of as though there were no common interest in the management of the two. *Kurtz v. Penn. Co.* 410.

INTERCHANGEABLE MILEAGE.

When passenger presents to Pullman conductor an interchangeable mileage ticket and Pennsylvania mileage book entitling him to transportation from New Castle to New York, he presents such transportation for that journey as is "required by the railway company." *Kurtz v. Penn. Co.* 410 (416).

INTERMEDIATE POINT. See **LONG AND SHORT HAUL.****INTERVENERS.**

Avery Manufacturing Co. v. A. T. & S. F. Ry. Co. 20.

Duncan & Co. v. N. C. & St. L. Ry. Co. 590.

Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co. 56, 142, 254, 276.

Kansas City Transportation Bureau v. A. T. & S. Ry. Co. 195.

Northern Coal & Coke Co. v. Colo. & So. Ry. Co. 369.

Williams Co. v. V. S. & P. Ry. Co. 482.

IN TRANSIT. See **MILLING IN TRANSIT; REBILLING; RECONSIGNMENT; TRANSIT PRIVILEGE.****INVESTIGATION.**

In addition to evidence presented by complainant, Commission made thorough investigation on its own motion. *Ozark Fruit Growers Assn. v. St. L. & S. F. R. R. Co.* 153.

IRON ARTICLES. See **COMMODITIES.****IRON ORE.** See **COMMODITIES.****IRON, PIG.** See **COMMODITIES.****IRON PYRITES.** See **COMMODITIES.****IRON, STRUCTURAL.** See **COMMODITIES.****JACKETS.** See **COMMODITIES.****JOBBER'S RATE.**

No law, common and statute, under which jobber is entitled to distribute commodities under as low or lower rates as through rates from points of origin to point of consumption. *Williams Co. v. V. S. & P. Ry. Co.* 482 (486).

JOINT RATES.

Operating conditions and differences in location do not warrant Commission's ordering joint through rates prayed for or further reducing rates complained of. *Grand Junction Mining & Fuel Co. v. Colo. Mid. Ry. Co.* 452.

Unwillingness to divide revenue on traffic originating off line that defendant could originate on its line untenable as reason for withdrawal of joint rates. *Delray Salt Co. v. C. St. P. M. & O. Ry. Co.* 507 (511).

Shipper can not defeat application by constituting carrier its agent to collect charges to junction and reship to destination. *Stock Yards Cotton & Linseed Meal Co. v. C. M. & St. P. Ry. Co.* 366 (367).

Established on lumber and other forest products between certain points in Idaho and Montana and certain points in North Dakota. *Kalispell Lumber Co. v. G. N. Ry. Co.* 164.

JOINT RATES—Continued.

Established on lignite coal from Louisville, Colo., via Denver, to C. R. I. & P. points in Kansas, Missouri, Nebraska, Iowa, and Oklahoma. *Northern Coal & Coke Co. v. Colo. & So. Ry. Co.* 369.

Act empowers Commission to establish through route and joint rate, provided no satisfactory through route already exists. *In re Through Passenger Routes*, 300 (301).

Rate from Marshall, Tex., to East St. Louis as part of through rate to Biddeford, Me., found unreasonable. *Pepperell Manufacturing Co. v. Texas So. Ry. Co.* 353.

No through rate from Las Animas, Colo., to Romero, Tex., but through rate from farther distant Colorado points. *American Beet Sugar Co. v. C. R. I. & P. Ry. Co.* 288.

Commission may establish through route and joint rate, provided no reasonable or satisfactory through route exists. *Enterprise Fuel Co. v. Pa. R. R. Co.* 219 (220).

If established, divisions must be stated, under circumstances in this case. *Cedar Hill Coal & Coke Co. v. A. T. & S. F. Ry. Co.* 402 (404).

Added to local, compared with joint through rate to farther distant point. *Stone-Ordean-Wells Co. v. N. P. Ry. Co.* 313.

Subsequently established less than prior sum of locals; latter held unreasonable. *Allen & Co. v. C. M. & St. P. Ry. Co.* 293.

Asked for, found already to be in effect. *Masurite Explosive Co. v. N. & W. Ry. Co.* 530.

Cancellation, resulting in advance. *Delray Salt Co. v. C. St. P. M. & O. Ry. Co.* 507.

JUDICIAL NOTICE. See also **RECORD.**

The Commission supplements records (of cases) by using official information before it in determining questions presented to it. *Sanford v. Western Express Co.* 32 (36).

JURISDICTION.

The Interstate Commerce Commission has exclusive jurisdiction over interstate rates, and is necessarily not bound to follow decisions of state commissions. *Railroad Commission of Wisconsin v. C. & N. W. Ry. Co.* 85 (89).

Pullman Company is a common carrier and subject to jurisdiction of this Commission. *Kurtz v. Penn. Co.* 410 (414).

KITCHEN SAFES. See **COMMODITIES.****KNOWLEDGE.**

While shipper is put upon notice of rate by publication of tariff, it is not held that shipper must determine for himself the lawfulness of rate, regulation, or practice, upon his peril. *Interstate Remedy Co. v. American Express Co.* 436 (439).

Law compels carriers to publish and post tariffs on theory that they will be informative. *Newton Gum Co. v. C. B. & Q. R. R. Co.* 341 (346).

Shipper can not be charged with knowledge of intent of framers or carrier's canons of construction. *Newton Gum Co. v. C. B. & Q. R. R. Co.* 341 (346).

LADDERS. See **COMMODITIES.****LARCH.** See **COMMODITIES.****LATHS.** See **COMMODITIES.****"LAWFUL."** See **WORDS AND PHRASES.****"LEGAL."** See **WORDS AND PHRASES.****LEGAL RATE.**

A schedule of rates extended by carrier to shipping public may be canceled upon giving thirty days' notice in conformity with the law. But such cancellation is not to be construed as a withdrawal of all rights arising under such tariff to those who have availed themselves of its provisions prior to date such tariff dies. *Interstate Remedy Co. v. American Express Co.* 436 (438).

LEGAL RATE—Continued.

The responsibility rests upon carrier to have lawful rates and rules in effect, and every shipper may with safety rely upon such rates without fear that they will be withdrawn as illegal after he has made shipment thereon, resting in the confidence that they are lawful so long as they are in force. *Interstate Remedy Co. v. American Express Co.* 436 (439).

After complaint filed defendant voluntarily accorded complainant the lower rate; no tariff authority however, but assumed it was accorded on a construction of classification. Presumption is that defendant considers lower rate reasonable. *Reddick v. Mich. Cent. R. R. Co.* 492.

Statute requires carriers to publish their tariffs, and to adhere to those tariffs. In no other way could discriminations which have existed be prevented. In enforcement of that statute Commission has no discretion. *Ames Brooks Co. v. Rutland R. R. Co.* 479 (481).

Law does not contemplate that shipper shall move upon any other theory than that provisions of carrier's tariff are in full compliance with law's demands. *Interstate Remedy Co. v. American Express Co.* 436 (439).

Proportional rate published; this did not, however, make it a legal rate, in view of the existence of a published through rate. *Lindsay Bros. v. B. & O. S. W. R. R. Co.* 6 (8).

For carrier's convenience shipment sent over route other than that via which the rate charged applied. *Lee-Warren Milling Co. v. C. R. I. & P. Ry. Co.* 422.

Private contracts can have no effect upon application of lawful tariff governing a shipment. *Interstate Remedy Co. v. American Express Co.* 436 (437).

Tariff fixing rate having been legally established, duty of defendants to apply rate so published and in effect. *Ames Brooks Co. v. Rutland R. R. Co.* 479.

No item in tariff exactly applicable. In any event the rate charged was unreasonable. *Carstens Packing Co. v. C. M. & St. P. Ry. Co.* 469 (470).

Rate once in effect continues to be lawful rate until it has been canceled. *New Albany Box & Basket Co. v. Ill. Cent. R. R. Co.* 315.

Mere publication can not make a rate lawful that is unreasonable and excessive. *Arkansas Fuel Co. v. C. M. & St. P. Ry. Co.* 95.

Applied on shipment of dredging-machine parts. *Link-Belt Co. v. C. & N. W. Ry. Co.* 566.

No specific rate applicable. *Otis Elevator Co. v. C. G. W. Ry. Co.* 502.

LETTUCE. See **COMMODITIES.**

LIABILITY, LIMITED. See **RELEASED RATE.**

LIGNITE COAL. See **COMMODITIES.**

LIMITATION. See also **INFORMAL COMPLAINT.**

Cause of the action accrued on date charges were paid. *Marshall & Michell Grain Co. v. St. L. & S. F. R. R. Co.* 385.

Inasmuch as claim was not filed within two-year period, plea must be sustained. *Otis Elevator Co. v. C. G. W. Ry. Co.* 502 (503).

LIMITED LIABILITY. See **RELEASED RATE.**

LINSEED MEAL. See **COMMODITIES.**

LIVE STOCK. See **COMMODITIES.**

LOADED PAPER SHELLS. See **COMMODITIES.**

LOADING.

In absence of specific tariff provision, no additional charge could be collected from shipper to cover loading service performed by carrier. *Voorhees v. A. C. L. R. R. Co.* 42.

Carload freight generally by shipper. *Ames Brooks Co. v. Rutland R. R. Co.* 479 (481).

Strawberries. *Ozark Fruit Growers Assn. v. St. L. & S. F. R. R. Co.* 106 (109).

LOCAL RATE. See also **THROUGH AND LOCAL.**

Question of whether or not rate to an interior point, made up of a competitive water or terminal rate plus a local rate, is reasonable, must of necessity depend largely upon the reasonableness of the local rate. *Commercial Club of Hattiesburg v. Alabama Great Southern R. R. Co.* 534 (543).

No through rate, combination of locals applied. Carriers ordered to establish reasonable local rate from Sterling, Ill., to Wausa, Nebr., when shipments originate at Christopher, Ill. *Sunderland Bros. Co. v. C. & N. W. Ry. Co.* 212.

Lines between Mississippi and Missouri River exact full locals on traffic from Indianapolis. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 56 (62).

Amarillo, Tex., to St. Vrain, N. Mex., on fence posts from Asher, Okla., found unreasonable. *Snook & Janes v. A. T. & S. F. Ry. Co.* 356.

Higher than subsequently established through rates; former held unreasonable. *Allen & Co. v. C. M. & St. P. Ry. Co.* 293.

Added to through rate, compared with joint through rate to farther distant point. *Stone-Ordean-Wells Co. v. N. P. Ry. Co.* 313.

Not necessarily measure of division. *In re Through Passenger Routes*, 300 (310).

LOCALITIES.

The act was intended to prohibit undue discrimination against localities as well as persons. *Railroad Commissioners of Florida v. S. A. L. Ry.* 1 (2).

LOCALITIES.

Abilene, Tex., from Racine, Wis., wagons, 488.

Aetna, Ind., from Howe, Ill., sulphuric acid, 440.

Alachua, Fla., to Savannah, Ga., sea-island cotton, 1.

Alden, Pa., to Walbrook and Hillen, Md., coal, 219.

Algona, Iowa, from Hillsboro, Oreg., lumber, 547.

Allegheny, Pa., to Victoria Mines, Ontario, Canada, machinery, 477.

Amarillo, Tex., to St. Vrain, N. Mex., fence posts, 356.

Andover, S. Dak., from Duluth, Minn., sawdust, 190.

Arkansas to C. F. A. territory, yellow pine, 323, 335, 336.

Arkansas from Indianapolis, class rates, 254.

Arkansas from Kokomo and Muncie, Ind., wire and nails, 155.

Arkansas from Shreveport, La., fertilizer, 49.

Arlington, S. Dak., to Milwaukee, grain, 431.

Austin, Minn., to Dayton, Ohio, non-edible grease, 82.

Avon, Conn., to Pleasant Prairie, Wis., safety fuse, 351.

Baden, Miss., to Davenport, Iowa, cypress lumber, 209.

Baltimore, Md., from Newark, Ohio, clover hullers, 291.

Bartlesville, Okla., from Fishers, Ind., oil-well supplies, 318.

Bates, Ill., to Detroit, Mich., corn, 208.

Beaver, Wis., to Painesdale, Mich., potatoes, 364.

Beecher Lake, Wis., to Chicago, laths, 26.

Billings, Mont., from Fresno, Cal., dried fruit, 313.

Billings, Mont., from New Orleans, La., rice, 30.

Bisbee, Ariz., from Deming, N. Mex., and El Paso, Tex., alfalfa hay, 435.

Bloomfield, Iowa, to Ogden, Utah, passenger fare, 103.

Blue Mounds, Wis., from Kalamazoo, Mich., boilers, 441.

Boston, Mass., from Ogdensburg, N. Y., grain, 479.

Bozeman, Mont., from Fresno, Cal., dried fruit, 313.

Brady, Tex., from Chicago, cedar poles, 40.

Brazil, Ind., to Minnesota Transfer, Minn., brick, 600.

Bremerton, Wash., from Washington, D. C., merchandise, 394.

Brock, Nebr., to St. Louis, grain, 494.

Buffalo, N. Y., to Watertown, Wis., steel, 358.

LOCALITIES—Continued.

- Cabin Creek, Ark., from El Reno, Okla., household goods, 425.
- Cameo, Colo., to western points, coal, 452.
- Canton, Ill., to Missouri River points, agricultural implements, 20.
- Cardington, Ohio, to Green Bay, Wis., elm hoops, 420.
- Carroll Park siding, Baltimore, Md., from Vanceburg, Ky., chestnut ties, 565.
- Cattaraugus, N. Y., to Janesville, Wis., buckwheat, 384.
- Cedar Rapids, Iowa., milling-in-transit rates on corn, 232.
- C. F. A. territory from Erie, Pa., building and roofing paper, 124.
- Chattanooga, Tenn., from Martindale, Ga., canned peaches, 523.
- Chicago, free delivery of express packages, 37.
- Chicago from Beecher Lake, Wis., laths, 26.
- Chicago to Brady, Tex., cedar poles, 40.
- Chicago to Fort Dodge, Iowa, coal and other commodities, 572.
- Chicago from Grafton, Wis., chairs, 217.
- Chicago from Kansas City, hay, 100.
- Chicago from Louisiana and Mississippi points, cabbages, 376.
- Chicago from Niles, Mich., mole traps, 492.
- Chicago to Oroville, Cal., dredging-machine parts, 566.
- Chicago to Portland, Oreg., elevator guides, 502.
- Chicago to San Francisco, paper pails, 128.
- Chicago to Santa Rosa, N. Mex., class and commodity rates, 550.
- Chicago to South Bend, Ind., paper stock, 149.
- Chicago to Toledo, manure, 571.
- Chicago from Wisconsin points, cheese, 85.
- Chilton, Wis., to Kansas City, Mo., malt, 10.
- Clearfield, Iowa, from Hines, Minn., cedar poles, 285.
- Cleveland, Ohio, from New York, iron pyrites, 320.
- Clinton, Ohio, from Kansas City, hay, 490.
- Courtenay, N. Dak., from New York and St. Paul, express rates, 32.
- Davenport, Iowa, from Baden and Kirkpatrick, Miss., cypress lumber, 209.
- Dayton, Ohio, from Austin, Minn., non-edible grease, 82.
- De Kalb, Ill., to Olivia and Hutchinson, Minn., manure spreaders, 447.
- Deming, N. Mex., to Bisbee, Ariz., alfalfa hay, 435.
- De Queen, Ark., to Memphis, Tenn., lumber, 129.
- Detroit, Mich., from Bates, Ill., corn, 208.
- Detroit, Mich., to various points, medicines, 436.
- Douglas, Ariz., from El Paso, Tex., alfalfa hay, 435.
- Duluth, Minn., to Andover, S. Dak., sawdust, 190.
- Durham, N. C., from Pocahontas (Va.) district, coal, 12.
- Dyersburg, Tenn., to Louisville, Ky., logs, 315.
- East St. Louis from Haverhill, Kans., live stock, 188.
- East St. Louis from Marshall, Tex., cotton, 353.
- East St. Louis to Philadelphia, Pa., icing charge, 426.
- East St. Louis from Prairie Grove, Ark., elm hoops, 186.
- El Paso, Tex., to Bisbee and Douglas, Ariz., alfalfa hay, 435.
- El Paso, Tex., from New Mexico points, empty oil barrels, 505.
- El Reno, Okla., to Cabin Creek, Ark., household goods, 425.
- Erie, Pa., to C. F. A. territory, building and roofing paper, 124.
- Eunice, La., from Windsor, Colo., flour, 349.
- Evansville, Wis., from Wellington, Ohio, butter, 374.
- Fenter, Ark., to Woodruff, Mo., ties, 528.
- Fishers, Ind., to Bartlesville, Okla., oil-well supplies, 318.
- Forrest City, Ark., from Tupelo, Okla., corn, 569.

LOCALITIES—Continued.

- Fort Dodge, Iowa, from Chicago, coal and other commodities, 572.
- Fort Worth, Tex., to Rocky Mount, N. C., fresh meat and packing-house products, 442.
- Fresno, Cal., to Bozeman and Billings, Mont., dried fruit, 313.
- Gainesville, Fla., to Savannah, Ga., sea-island cotton, 1.
- Galva, Ill., to Missouri River points, agricultural implements, 20.
- Glencoe, Minn., from La Crosse, Wis., beer, 396.
- Grafton, Wis., to Chicago, chairs, 217.
- Green Bay, Wis., from Cardington, Ohio, elm hoops, 420.
- Gulfport, Miss., from Missouri, Kansas, and Oklahoma, corn, 385.
- Hammond, Ind., from St. Paul, Minn., cattle, 531.
- Hattiesburg, Miss., from C. F. A. and other points, 534.
- Haverhill, Kans., to East St. Louis, Ill., live stock, 188.
- Hawthorne, Ala., to Savannah, Ga., sea-island cotton, 1.
- Hepler, Kans., to St. Louis, reconsigned to southeastern territory, hay, 146.
- Hermanville, Miss., to New Orleans, cotton, 131.
- Hettinger, N. Dak., from St. Paul, class rates, 293.
- Hillen, Md., from Alden, Pa., through route on coal, 219.
- Hillsboro, Oreg., to Algona, Iowa, lumber, 547.
- Hines, Minn., to Clearfield, Iowa, and Kingman, Kans., cedar poles, 285.
- Howe, Ill., to Aetna, Ind., sulphuric acid, 440.
- Hugo, Okla., from Salina, Kans., bran, 422.
- Hutchinson, Kans., from Sheffield, Ala., pig iron, 144.
- Hutchinson, Minn., from De Kalb, Ill., manure spreader, 447.
- Idaho to Wyoming, cedar posts and lumber, 449.
- Indianapolis to Arkansas, Louisiana, Oklahoma, and Texas points, class and commodity rates, 254.
- Indianapolis, Ind., to Missouri River points, class and commodity rates, 56.
- Indianapolis to Southern states, class and commodity rates, 142.
- Indianapolis to Winona and St. Paul, class and commodity rates, 276.
- Iowa points, from Mobile and New Orleans, bananas, 151.
- Iron Ridge, Wis., to Louisville, Ky., and Michigan City, Ind., ground iron ore, 562.
- Iron Ridge, Wis., to various interstate points, ground iron ore, 587.
- Iuka, Kans., to Preston, Kans., coal, 560.
- Iuka, Kans., from Rugby, Colo., coal, 560.
- James, Iowa, from Northome, Minn., poles, 38.
- Janesville, Wis., from Cattaraugus, N. Y., buckwheat, 384.
- Kalamazoo, Mich., to Blue Mounds and Mount Horeb, Wis., boilers, 441.
- Kalispell district to points on Pembina-Port Arthur line, lumber, 164.
- Kane, Pa., from New York, cullet, 126.
- Kansas City, Mo., from Chilton, Wis., malt, 10.
- Kansas City to Clinton, Ohio, hay, 490.
- Kansas City to Mississippi River, Ohio River, Carolinas, and Gulf ports, grain, 195.
- Kansas City, Mo., from Ottumwa, Iowa, pickles, 368.
- Kansas City to Peoria and La Salle, Ill., Des Moines, Iowa, and Stillwater, Minn., hay, 100.
- Kansas City, Mo., to Santa Rosa, N. Mex., class and commodity rates, 550.
- Kansas City, Mo., to Seymour, Iowa, hay, 95.
- Kansas points to Phoenix, Ariz., wheat and flour, 73.
- Kennebec, S. Dak., from Midland, Tex., range cattle, 418.
- Kilbourne, La., to Pine Bluff, Ark., cotton seed, 296.
- Kingman, Kans., from Hines, Minn., cedar poles, 285.
- Kings Mills, Ohio, to Muncie, Ind., ammunition, 298.

LOCALITIES—Continued.

- Kirkpatrick, Miss., to Davenport, Iowa, cypress lumber, 209.
 Kokomo, Ind., to Arkansas common points, wire, 155.
 La Crosse, Wis., to Glencoe, Minn., beer, 396.
 La Crosse, Wis., from Mendota, Minn., clam shells, 80.
 Las Animas, Colo., to Romero, Tex., beet sugar, 288.
 Lawrenceburg, Ind., to Milwaukee, Wis., vehicles, 6.
 Lemmon, S. Dak., from St. Paul, class rates, 293.
 Linndale, Ohio, from New York, iron pyrites, 320.
 Long Island City, N. Y., to Shipman, Va., marble, 177.
 Louisiana to C. F. A. territory, yellow pine, 323, 335, 336.
 Louisiana points from Indianapolis, class and commodity rates, 254.
 Louisville, Colo., to points in Kansas, Nebraska, Missouri, Iowa, and Oklahoma, lignite coal, 369.
 Louisville, Ky., from Dyersburg, Tenn., logs, 315.
 Louisville, Ky., from Iron Ridge, Wis., ground iron ore, 562.
 Ludlow, Colo., to points on Santa Fe, coal, 402.
 Lusk, Wyo., from Lyons, Kans., rock salt, 433.
 Lyons, Kans., to Lusk, Wyo., rock salt, 433.
 Macon, Ga., from Waukesha, Wis., mineral water and ginger ale, 93.
 Manitowoc, Wis., from Wellston, Ohio, soft coal, 450.
 Maricopa County, Ariz., express rates to and from, 152.
 Marinette, Wis., milling in transit, lumber, 382.
 Marshall, Tex., to East St. Louis, Ill., cotton, 353.
 Martindale, Ga., to Chattanooga, Tenn., canned peaches, 523.
 Medford, Oreg., from Spokane, Wash., household goods, 424.
 Memphis, Tenn., from De Queen, Ark., lumber, 129.
 Memphis, Tenn., to Santa Rosa, N. Mex., class and commodity rates, 550.
 Mendota, Minn., to La Crosse, Wis., clam shells, 80.
 Menominee, Mich., milling in transit, lumber, 382.
 Mesa, Ariz., express rates to and from, 182.
 Michigan City, Ind., from Iron Ridge, Wis., ground iron ore, 562.
 Midland, Tex., to Kennebec, S. Dak., range cattle, 418.
 Milford, Nebr., from Strong, Colo., lump coal, 558.
 Milo, Mo., from Minneapolis, Minn., oil meal, 366.
 Milton Junction, Wis., from Reno, Pa., gasoline, 401.
 Milwaukee, Wis., from Arlington, S. Dak., grain, 431.
 Milwaukee, Wis., from Lawrenceburg, Ind., vehicles, 6.
 Milwaukee, Wis., to Tacoma, Wash., tanning outfit, 469.
 Milwaukee, Wis., from Trenary, Mich., tan bark, 348.
 Minneapolis, Minn., to Milo, Mo., oil meal, 366.
 Minneapolis, Minn., to New York, agricultural implements, 193.
 Minnesota Transfer, Minn., from Brazil, Ind., brick, 600.
 Mississippi River points from Kansas City, hay, 100.
 Missoula district to North Dakota points, lumber, 173.
 Missouri River points from Canton, Galva, and Springfield, Ill., agricultural implements, 20.
 Missouri River points from Indianapolis, class and commodity rates, 56.
 Mobile to Iowa points, bananas, 151.
 Montrose, Iowa, from Traverse City, Mich., grape baskets, 339.
 Moundsville district, W. Va., to western points, coal, 512.
 Mount Horeb, Wis., from Kalamazoo, Mich., boilers, 441.
 Muncie, Ind., to Arkansas common points, wire, 155.
 Muncie, Ind., from Kings Mills, Ohio, ammunition, 298.

LOCALITIES—Continued.

- Nashville, Tenn., rebilling grain to southeastern points 590.
 Newark, Ohio, to Baltimore, Md., clover hullers, 291.
 New Castle, Pa., to New York, Pullman regulation, 410.
 New Mexico points to El Paso, empty oil barrels 505.
 New Orleans, La., to Billings, Mont., rice, 30.
 New Orleans from Hermanville and Port Gibson, Miss., cotton, 131.
 New Orleans to Iowa points, bananas, 151.
 New York to Cleveland and Linndale, Ohio, iron pyrites, 320.
 New York to Courtenay, N. Dak., express rates, 32.
 New York to Kane, Pa., cullet, 126.
 New York from Minneapolis, Minn., agricultural implements, 193.
 New York from New Castle, Pa., Pullman regulation, 410.
 New York from St. Andrews, S. C., cabbage, 42.
 New York from St. Andrews, S. C., lettuce, 45.
 New York to San Francisco, consolidated express packages, 458.
 Niles, Mich., to Chicago, mole traps, 492.
 North Birmingham, Ala., to Washington, D. C., brick, 584.
 Northome, Minn., to James, Iowa, poles, 38.
 Ogden, Utah, from Bloomfield, Iowa, passenger fare, 103.
 Ogdensburg, N. Y., to Boston, Mass., grain, 479.
 Okemah, Okla., to Terrell, Tex., snapped corn, 28.
 Oklahoma points from Indianapolis, class and commodity rates, 254.
 Olivia, Minn., from De Kalb., Ill., manure spreader, 447.
 Omaha, Nebr., elevator allowance, 337.
 Opelousas, La., from Windsor, Colo., flour, 349.
 Oroville, Cal., from Chicago, dredging-machine parts, 566.
 Ottumwa, Iowa, to Kansas City, Mo., pickles, 368.
 Ozark region to points north, east, and west, fruit, 106.
 Ozark region to southeastern and southwestern points, apples, 134.
 Ozark region to points east, north, and west, refrigeration, 153.
 Painesdale, Mich., from Beaver, Pound, and Wausaukee, Wis., potatoes, 364.
 Peoria, Ill., to Missouri River points, agricultural implements, 20.
 Philadelphia, Pa., free time, 497.
 Philadelphia, Pa., from East St. Louis, Ill., icing charge, 426.
 Philadelphia, Pa., from South St. Paul, Minn., cattle, 531.
 Phoenix, Ariz., from Kansas points, wheat and flour, 73.
 Phoenix, Ariz., from Kansas and western points, express rates, 182.
 Pine Bluff, Ark., from Kilbourne, La., cotton seed, 296.
 Pittsburg, Pa., track-storage charges, 116.
 Pleasant Prairie, Wis., from Avon, Conn., safety fuse, 351.
 Pocahontas (Va.) coal district, to Winston-Salem and Durham, N. C., coal, 12.
 Port Gibson, Miss., to New Orleans, La., cotton, 131.
 Portland, Oreg., from Chicago, elevator guides, 502.
 Portland Gateway, passengers, 300.
 Pound, Wis., to Painesdale, Mich., potatoes, 364.
 Prairie Grove, Ark., to East St. Louis, Ill., elm hoops, 186.
 Preston, Kans., from Iuka, Kans., coal, 560.
 Quincy, Ill., to San Francisco, show cases, 341.
 Racine, Wis., to Abilene, Tex., wagons, 488.
 Reno, Pa., to Milton Junction, Wis., gasoline, 401.
 Rocky Mount, N. C., from Fort Worth, Tex., fresh meat and packing-house products, 442.
 Sano, Tex., from Las Animas, Colo., beet sugar, 288.

LOCALITIES—Continued.

- Rugby, Colo., to Iuka, Kans., coal, 560.
 St. Andrews, S. C., to New York, cabbages, 42.
 St. Andrews, S. C., to New York, lettuce, 45.
 St. George, Staten Island, N. Y., demurrage on coal, 360.
 St. Joseph, Mich., to Wausau, Wis., building paper, 399.
 St. Louis, reconsignment of hay from Kansas, 146.
 St. Louis to Santa Rosa, N. Mex., class and commodity rates, 550.
 St. Louis from Talmage and Brock, Nebr., grain, 494.
 St. Paul, Minn., to Courtenay, N. Dak., express rates, 32.
 St. Paul, Minn., to Hammond, Ind., cattle, 531.
 St. Paul to Lemmon, S. Dak., and Hettinger, N. Dak., class rates, 293.
 St. Paul from Indianapolis, class and commodity rates, 276.
 St. Vrain, N. Mex., from Amarillo, Tex., fence posts, 356.
 Salina, Kans., to Hugo, Okla., bran, 422.
 San Francisco from Chicago, paper pails, 128.
 San Francisco from New York, consolidated packages, 458.
 San Francisco from Quincy, Ill., show cases, 341.
 Santa Rosa, N. Mex., from Chicago, Kansas City, Memphis, and St. Louis, class and commodity rates, 550.
 Savannah, Ga., from Hawthorne, Gainesville, and Alachua, Fla., sea-island cotton, 1.
 Seymour, Iowa, from Kansas City, Mo., hay, 95.
 Sharon, Pa., to Wilcoe, W. Va., masurite, 530.
 Sheffield, Ala., to Hutchinson, Kans., pig iron, 144.
 Shipman, Va., from Long Island City, N. Y., marble, 177.
 Shreveport, La., to Arkansas points, fertilizer, 49.
 South Bend, Ind., from Chicago, paper stock, 149.
 South Canon, Colo., to western points, coal, 452.
 South St. Paul, Minn., to Philadelphia, Pa., 531.
 Spokane, Wash., to Medford, Oreg., household goods, 424.
 Spokane, Wash., order suspended, 179.
 Springfield, Ill., to Missouri River points, agricultural implements, 20.
 Sterling, Ill., to Wausau, Nebr., coal, 212.
 Strong, Colo., to Milford, Nebr., lump coal, 558.
 Superior, Nebr., to Lusk, Wyo., rock salt, 433.
 Superior, Wis., to North and South Dakota, coal, 289.
 Tacoma, Wash., from Milwaukee, Wis., tanning outfit, 469.
 Talmage, Nebr., to St. Louis, grain, 494.
 Tempe, Ariz., express rates to and from, 182.
 Tennessee points to Louisville, Ky., logs, 315.
 Terrell, Tex., from Okemah, Okla., snapped corn, 28.
 Texas common points from Vicksburg, Miss., bagging and ties, 482.
 Texas points from Indianapolis, class and commodity, 254.
 Toledo, Ohio, from Chicago, manure, 571.
 Traverse City, Mich., to Montrose, Iowa, grape baskets, 339.
 Trenary, Mich., to Milwaukee, Wis., tan bark, 348.
 Tupelo, Okla., to Forrest City, Ark., corn, 569.
 Vanceburg, Ky., to Carroll Park siding, Baltimore, Md., chestnut ties, 565.
 Vicksburg, Miss., to Texas common points, bagging and ties, 482.
 Victoria Mines, Ontario, Canada, from Allegheny, Pa., machinery, 477.
 Vineland, N. J., to various points, small live animals, 214.
 Walbrook, Md., from Alden, Pa., coal, 219.
 Walsenburg district, Colo., to Kansas, Nebraska, Oklahoma, Texas, and New Mexico, coal, 387.

LOCALITIES—Continued.

- Washburn, Wis., to western points, salt, 507.
 Washburn, Wis., to Winside, Nebr., poles, 38.
 Washington, D. C., to Bremerton, Wash., merchandise, 394.
 Washington, D. C., from North Birmingham, Ala., brick, 584.
 Watertown, Wis., from Buffalo, N. Y., steel, 358.
 Waukesha, Wis., to Macon, Ga., mineral water and ginger ale, 93.
 Wausa, Nebr., from Sterling, Ill., coal, 212.
 Wausa, Wis., from St. Joseph, Mich., building paper, 399.
 Wausaukee, Wis., to Painesdale, Mich., potatoes, 364.
 Wellington, Ohio, to Evansville, Wis., butter, 374.
 Wellston, Ohio, to Manitowoc, Wis., soft coal, 450.
 Whittemore, Iowa, from Wittenberg, Wis., posts, 525.
 Wilcoe, W. Va., from Sharon, Pa., masurite, 530.
 Windsor, Colo., to Eunice and Opelousas, La., flour, 349.
 Winona, Minn., from Indianapolis, class and commodity, 276.
 Winside, Nebr., from Washburn, Wis., poles, 38.
 Winston-Salem, N. C., from Pocahontas (Va.) coal district, coal, 12.
 Wisconsin points to Chicago, cheese, 85.
 Wittenberg, Wis., to Whittemore, Iowa, posts, 525.
 Woodruff, Mo., from Fenter, Ark., ties, 528.
 Wyoming, from Idaho, cedar posts and lumber, 449.

LOCATION.

- A point is entitled to the rate which its location and other advantages dictate, without taking into account conditions which bring about lower rates to other points. *Board of Trade of Winston-Salem v. N. & W. Ry. Co.* 12 (16).
 From geographical standpoint, Kalispell and Missoula groups are corresponding lumber-producing sections and for that reason should take the same rates. *Big Blackfoot Milling Co. v. N. P. Ry. Co.* 173 (175).
 Chicago much shorter distance and enjoys natural advantages of location over Indianapolis in reaching St. Paul and Winona. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 276 (282).
 Commission will not take from a locality advantages which on account of its location naturally belong to it. *Valley Flour Mills v. A. T. & S. F. Ry. Co.* 73 (76).
 Linndale, because of its proximity to Cleveland, ought to take Cleveland rate. *American Agricultural Chemical Co. v. Erie R. R. Co.* 320 (322).

LOGS. See also COMMODITIES.

- Rate should not exceed that on manufactured lumber. *MacGillis & Gibbs Co. v. C. & E. I. R. R. Co.* 40.

LONG HAUL.

- Revenue on coal from Walsenburg to consuming markets must be divided between several carriers, while from other districts the carriage is performed by one line. *Cedar Hill Coal & Coke Co. v. Colo. & So. Ry. Co.* 387 (391).
 On through shipments differences in distance are not important in considering rates. *Avery Manufacturing Co. v. A. T. & S. F. Ry. Co.* 20 (22).

LONG LINE.

- A road operating a direct through line has more controlling voice in fixing rates between two points than another route made up of two or more separate roads. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 56 (60).

LONG AND SHORT HAUL.

- Where rates of carriers are in unlawful violation of section 4 it is not the practice of the Commission to enter an order fixing an absolute rate for the shorter haul, but only to require the carriers guilty of the violation to cease and desist from charging a higher rate for the shorter than for the longer haul. *Moise Bros. Co. v. R. I. & P. Ry. Co.* 550 (551).

LONG AND SHORT HAUL—Continued.

Not unduly discriminatory to haul traffic to and from Gulf ports at lower rates than to and from Hattiesburg. Controlling effect of Mississippi River and Gulf justify that adjustment. *Commercial Club of Hattiesburg v. Alabama Great Southern R. R. Co.* 534 (545).

Ordinarily orders are intended only to correct the unlawful relation of rates and give carriers concerned the option either of increasing the rates for the longer haul or reducing the rates for the shorter haul. *Moise Bros. Co. v. C. R. I. & P. Ry. Co.* 550 (552).

Fact that traffic may move at a lower rate from Springfield, Ill., via Peoria than from the latter point is not conclusive that the rates are discriminatory against Peoria. *Avery Manufacturing Co. v. A. T. & S. F. Ry. Co.* 20 (25).

Having explained and excused violation of section 4, the issue as to the reasonableness of intermediate rate must take same course as any other issue involving reasonableness of rates. *Moise Bros. Co. v. C. R. I. & P. Ry. Co.* 550.

Lower rate to more distant point on the same line was in violation of fourth section of act and therefore unlawful. It might also be declared unlawful because discriminatory. *Sunderland Bros. Co. v. C. & N. W. Ry. Co.* 433 (434).

Circumstances and conditions found to be substantially similar at intermediate and long-distance point, and rate to former found unreasonable. *Heileman Brewing Co. v. C. M. & St. P. Ry. Co.* 396.

Laths, Beecher Lake, Wis., to Chicago, should not exceed rate from Pembine, Wis., a farther distant point, the circumstances and conditions being the same. *Neufeld v. C. M. & St. P. Ry. Co.* 26.

No through rate from intermediate point, but through rate from farther distant point to same destination less than from intermediate point. *American Beet Sugar Co. v. C. R. I. & P. Ry. Co.* 288.

Rate to San Francisco made under circumstances of water competition and therefore may be lower than to intermediate points where such competition does not exist. *Rogers v. O. R. R. & N. Co.* 424 (425).

Carrier may make low rates to meet water competition, and somewhat higher rates to intermediate points at which same competition does not exist. *Valley Flour Mills v. A. T. & S. F. Ry. Co.* 73 (78).

Competition of short line at longer distance point justifying lower rates. *Fort Dodge Commercial Club v. Ill. Cent. R. R. Co.* 572 (575).

Rate from intermediate point should not exceed that from farther distant point. *Davenport Commercial Club v. Y. & M. V. R. R. Co.* 209.

Circumstances and conditions found different at longer distance point. *Bartling Grain Co. v. Mo. Pac. Ry. Co.* 494 (496).

LOW RATES.

Fertilizer, low-grade traffic, no risk, no special service, and is entitled to low rates. *Virginia-Carolina Chemical Co. v. St. L. S. W. Ry. Co.* 49.

LUMBER. See COMMODITIES.**LUMP COAL. See COMMODITIES.****MACHINERY. See COMMODITIES.****MAILS.**

Competition with express companies. *Sanford v. Western Express Co.* 32 (34).

MAINTENANCE OF RATE.

Defendant ordered to establish and maintain for a period of not less than two years a rate from Superior, Nebr., to Lusk, Wyo., that shall not exceed the rate contemporaneously maintained from Superior to Douglas, Wyo., a farther distant point. *Sunderland Bros. Co. v. C. & N. W. Ry. Co.* 433 (434).

MAINTENANCE OF RATE—Continued.

Rate from New York to Detroit reduced and ordered to be maintained two years; proportionate reduction voluntarily made from Cleveland. Cleveland rate to be maintained until expiration of order as to Detroit rate. *American Agricultural Chemical Co. v. Erie R. R. Co.* 350.

Before filing of complaint rate reduced, former rate admitted unreasonable, and willingness to make reparation indicated. Reparation awarded, but no order of maintenance of rate made. *Ottumwa Pickle Co. v. C. M. & St. P. Ry. Co.* 300.

Formal complaint and hearing made necessary by attitude of defendant; rate prescribed as reasonable should be maintained for a period of not less than two years. *State-Orlean-Wells Co. v. C. B. & Q. R. R. Co.* 30-31.

For the future it would be unreasonable to maintain a rate on lath from Beer Lake, Wis., to Chicago in excess of its current rate on the same commodity from Pembine, Wis. *Nesfield v. C. M. & St. P. Ry. Co.* 26-27.

Rate advanced by cancellation of long-and-short-haul provision in tariff after maintenance for five years; advanced rate effective about one month; no order for maintenance of rate. *Thomas v. C. M. & St. P. Ry. Co.* 364.

Rate voluntarily reduced; fifteen months later reparation claimed and awarded; rate to be maintained two years from date it became effective. *Tully Grain Co. v. Ft. S. & W. R. R. Co.* 28.

Rate from Hermanville, Miss., on uncompressed cotton should not exceed rate from Port Gibson, Miss., by more than 2 cents per 100 pounds. *Planters Gin & Compress Co. v. Y. & M. V. R. R. Co.* 131-133.

Act confers upon Commission authority to investigate and condemn such charges as are found to have been unreasonable and to prescribe a reasonable charge for the future. *Swift & Co. v. C. & A. R. R. Co.* 426 (428).

Through rate exceeding combination of locals reduced, reparation awarded, and no order for future, though rate again advanced. *Scully Steel & Iron Co. v. L. S. & M. S. Ry. Co.* 358.

Rate from Las Animas, Colo., to Romero, Tex., shall not, for two years, exceed rate from Holly, Colo., to same point. *American Beet Sugar Co. v. C. R. I. & P. Ry. Co.* 288.

Rate voluntarily established. No order entered requiring maintenance for any prescribed length of time. *Newark Machine Co. v. P. C. C. & St. L. Ry. Co.* 291.

The act provides that Commission may prescribe rates for a future period not exceeding two years. *Pacific Coast Lumber Mfrs. Assn. v. Nor. Pac. Ry. Co.* 465 (468).

Defendants to maintain for two years rate upon poles not exceeding that upon lumber. *MacGillis & Gibbs Co. v. C. & E. I. R. R. Co.* 40 (41).

Rate on ties ought not to exceed, for the future, rate contemporaneously charged on lumber. *Beckman Lumber Co. v. C. R. I. & P. Ry. Co.* 528 (529).

Reduced rates been in effect over year and half; no order for future. *Pepperell Manufacturing Co. v. Texas So. Ry. Co.* 353.

No order made at this time looking to the future. *Michael Cohen & Co. v. So. Ry. Co.* 177 (178).

MALT. See **COMMODITIES.**

MANUFACTURERS' RATE.

If cost of transporting raw material is very much less than manufactured article, then the process of manufacturing can, so far as the freight rate goes, be more advantageously conducted in the vicinity where the garment is finally sold. *Association of Union Made Garment Manufacturers v. C. & N. W. Ry. Co.* 405 (408).

MANURE. See **COMMODITIES.**

MANURE SPREADER. See **COMMODITIES.**

MARBLE. See **COMMODITIES.**

MARKET.

Carrier may not by reason of conducting market place in Pittsburg use its power as a common carrier to discriminate against or in favor of Pittsburg or any other community which it serves. *Wilson Produce Co. v. Pa. R. R. Co.* 116 (122).

Carriers may not by arbitrary adjustment of rates dictate or determine where wheat shall be milled or flour shall be marketed. *Valley Flour Mills v. A. T. & S. F. Ry. Co.* 73 (78).

No locality, manufacturer, or shipper has an exclusive right to supply a market. *Avery Manufacturing Co. v. A. T. & S. F. Ry. Co.* 20 (24).

MARKET COMPETITION.

Garments of cotton and wool come into competition with one another, and since the freight rate affects in a degree the price at which the garment can be sold, it follows that the rate must in a measure determine the ability of the complainant to sell its product. *Association of Union Made Garment Manufacturers v. C. & N. W. Ry. Co.* 405 (408).

Discriminatory to single out one or more milled products of grain and withhold transit privileges accorded some other product at that or some other point under similar circumstances where there is competition between millers. *Douglas & Co. v. C. R. I. & P. Ry. Co.* 232.

Carrier not guilty of discrimination because it does not afford as favorable rates as others serving different territory, though products carried by each are brought to the same market. *Chicago Lumber & Coal Co. v. Tioga Southeastern Ry. Co.* 323.

Afforded by jobbing centers, such as Duluth, which have benefit of low lake rates, must be considered in establishment of rates from St. Louis and Chicago to St. Paul. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 276 (281).

Competition in south of southern mills with those of the north since 1886 has reduced cotton cloths, but woolen and mixed goods remain first class. *Association of Union Made Garment Manufacturers v. C. & N. W. Ry. Co.* 405 (408).

Commission can not order reduction in order to meet market competition, as railroads are authorized to meet or not to meet competition, as to them seems to their interest. *La Salle Paper Co. v. Mich. Cent. R. R. Co.* 149.

Unless Chicago rates are fixed on competitive basis demand in St. Paul territory for iron is met from Pittsburg by lake-and-rail lines. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 276 (282).

Commission can not order reduction in rates to enable certain factories to overcome natural advantages enjoyed by competitive producing points. *Virginia-Carolina Chemical Co. v. St. L. S. W. Ry. Co.* 49 (52).

Three towns are strong competitors, and it is important to have a common rate if the conditions justify it. *Railroad Commissioners of Florida v. S. A. L. Ry.* 1 (2).

Slight differences in cost or in price of sale of grain decide markets to which it will go. *Kansas City Transportation Bureau v. A. T. & S. F. Ry. Co.* 195 (198).

MASURITE. See COMMODITIES.**MAXIMUM RATE.**

While true that Commission has condemned maximum rate clauses in tariffs, it is clear that at time shipments moved the maximum rate would have applied. *Lee-Warren Milling Co. v. C. R. I. & P. Ry. Co.* 422 (423).

MEASURE OF RATE.

If carriers insist upon making preferential rates to each other they may confidently expect such voluntary action on their part will be accepted and taken as evidence of unreasonableness of higher rates which they may undertake to enforce against other shippers. *Hitchman Coal & Coke Co. v. B. & O. R. R. Co.* 512.

MINUTE IN THE

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... .. of classif- a low-grade commodity Western Metallic

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... .. the mere publication can not make a Arkansas Fuel Co. v. C. M. &

... .. from New Castle, Pa., to Pittsburg for local through interstate transportation

... .. division of through rate as basis upon local rate. Morse Bros. Co. v. C. R. I. & P. Ry.

... .. amongst others, questions of dis- advantages. Avery Manufacturing Co. v. A. T. & S. F. Ry. Co. 20 24.

... .. capital required, hazard involved, and, especially, profits made under rates attacked. Sanford v. Western Express Co 32 35.

... .. the sole basis of rate mak- ing. Duncan & Co. v. N. C. & St. L. Ry. Co. 590 (593).
MEATS. See COMMODITIES.
MEDICINES. See COMMODITIES.

"MEETING THE RATE."

Carrier whose lawful tariff is higher than that of a competing line has no right to solicit or accept shipment with understanding or expectation that order of reparation will be sought at hands of Commission for purpose of equalizing to shipper a rate which he could have secured by giving shipment to another carrier. *Swift & Co. v. C. & A. R. R. Co.* 426 (430).

It is an entirely erroneous assumption that where there are two or more lines with different rates between two points a shipper may secure the application of the lowest rate by either of such lines regardless of which one he uses. *Hill & Webb v. M. K. & T. Ry. Co.* 569 (570).

Because delivering carrier sees fit to state that it will protect rate made by its competitor, but fails to do so, Commission can not hold such lower rate necessarily reasonable. *De Camp Bros. v. So. Ry. Co.* 144.

MERCHANDISE. See **COMMODITIES**.

METALLIC CARTRIDGES. See **COMMODITIES**.

MILEAGE BOOK.

Issued usually, if not invariably, at rate less than local fare, and in consideration of this the railroad issuing the book may attach to its use various conditions. *Kurtz v. Penn. Co.* 410 (416).

MILEAGE RATES. See also **DISTANCE**.

From Missouri and Arkansas to Oklahoma points, rates are practically on mileage basis. *Ozark Fruit Growers Assn. v. St. L. & S. F. R. R. Co.* 134 (137).

MILEAGE TICKET.

Presentation of local ticket for transportation to junction and mileage book from junction to destination for purpose of securing berth in Pullman car, which was refused. *Held*, That under its tariff Pullman Company should have declined to sell through berth to complainant. *Kurtz v. Penn. Co.* 410.

When passenger presents to Pullman conductor an interchangeable mileage ticket and Pennsylvania mileage book entitling him to transportation from New Castle to New York, he presents such transportation for that journey as is "required by the railway company." *Kurtz v. Penn. Co.* 410 (416).

MILLING IN TRANSIT.

Discriminatory to single out one or more milled products of grain and withhold from it or them transit privilege accorded at that or some other competitive point to other milled products of grain of substantially similar character and transported under substantially same conditions, where there is competition between millers of the grain either in marketing their product or in securing material for milling. *Douglas & Co. v. C. R. I. & P. Ry. Co.* 232.

Condition that ultimate destination be shown on original bill of lading, to obtain through rate, found unreasonable and reparation awarded on shipments assessed the combination of local rates. *Roper Lumber-Cedar Co. v. C. & N. W. Ry. Co.* 382.

MINERAL WATER. See **COMMODITIES**.

MINIMUM CHARGES.

Higher classification and minimum charges on empty oil barrels from points in New Mexico to El Paso, Tex., than from same points to Albuquerque found unreasonable. *Great Western Oil Co. v. A. T. & S. F. Ry. Co.* 505.

MINIMUM WEIGHT.

Reparation awarded because of excess weight charged on shipment, where two cars of smaller size but larger aggregate minimum weight were furnished instead of one car of smaller minimum weight ordered, which would have held the shipment. *Racine-Sattley Co. v. C. M. & St. P. Ry. Co.* 488.

MINIMUM WEIGHT—Continued.

Unsound in principle to permit carrier to impose additional charges on shipper who ordered car of capacity, length, or demension specified in tariffs, simply because it is not provided with cars of dimensions ordered. *Kaye & Carter Lumber Co. v. Minn. & Int. Ry. Co.* 285.

Export commodity rate and minimum weight unreasonable when applied to consignments on which charges would be less if assessed at higher domestic rate and lower minimum. *Newark Machine Co. v. P. C. C. & St. L. Ry. Co.* 291.

Earnings per car at less rate on high minimum so nearly same as earnings at higher rate on less minimum, Commission not justified in reducing higher rate. *La Salle Paper Co. v. Mich. Cent. R. R. Co.* 149 (150).

Tariff rule fixing 15,000 pounds minimum carload of dairy products, poultry, fresh meats, etc., for which carrier will furnish icing at its expense not found to be unreasonable. *Swift & Co. v. C. & A. R. R. Co.* 426.

Shipper entitled to icing of shipment which actually weighed less than minimum fixed, provided transportation charges are paid upon full amount of prescribed minimum. *Swift & Co. v. C. & A. R. R. Co.* 426 (430).

When larger capacity car is furnished instead of smaller capacity demanded, minimum applicable to smaller capacity car should be observed. *Beggs v. Wabash R. R. Co.* 208.

Should be established with relation to capacity of car and not to needs or desires of purchasers of product. *Ozark Fruit Growers Asso. v. St. L. & S. F. R. R. Co.* 134 (136).

Through rate exceeded combination of locals based upon minimums applicable under tariffs naming combination. *Noble v. C. M. & St. P. Ry. Co.* 420 (421).

Should be same for refrigeration and transportation charges. *Ozark Fruit Growers Asso. v. St. L. & S. F. R. R. Co.* 106 (108).

Peaches and strawberries, Ozark region to points north, east, and west. *Ozark Fruit Growers Asso. v. St. L. & S. F. R. R. Co.* 106.

Car furnished of greater capacity than ordered; charges assessed on higher minimum. *Hanna Coal Co. v. N. P. Ry. Co.* 289.

Lower rates should be applied on higher carload minima. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 56 (70).

Assessed on each of two kinds of grain in one car separated by bulkhead. *Hewitt & Connor v. C. & N. W. Ry. Co.* 431.

Paper pails, Chicago to San Francisco, reasonable. *Zellerbach Paper Co. v. A. T. & S. F. Ry. Co.* 128.

MISROUTING.

In absence of specific routing instructions a carrier is obliged ordinarily to carry via route taking lowest rate. However, where shipper directs routing, it is duty of carrier to follow instructions. *Preston v. C. & O. Ry. Co.* 565.

No duty rested upon carrier to hunt up some unnatural connection by which traffic might reach destination at slightly lower transportation charge. *Wheeler Lumber, Bridge & Supply Co. v. C. M. & St. P. Ry. Co.* 525 (527).

Shipment delivered without instructions. Duty of initial line to route via junction which would have made lowest combination of locals between origin and destination. *Hill & Webb v. M. K. & T. Ry. Co.* 569.

Shipper gave no specific routing instructions, and it was duty of carriers to transport via route carrying lowest rate. *Marshall & Michel Grain Co. v. St. L. & S. F. R. R. Co.* 385 (386).

Shipper routed via expensive route to test market at intermediate point; no refund on claim for misrouting. *Counsil v. St. L. & S. F. R. R. Co.* 188.

Shipper gave no instructions and carrier disregarded its duty to forward via cheapest reasonable available route. *Hendrickson Lumber Co. v. K. C. S. Ry. Co.* 129.

MISROUTING—Continued.

Shipment sent over natural, though more expensive, route. *Wheeler Lumber, Bridge & Supply Co. v. C. M. & St. P. Ry. Co.* 525.

Shipment misrouted by initial line, no instructions being given. *Noble v. St. L. & S. F. R. R. Co.* 186.

Cullet, New York, N. Y., to Kane, Pa. *Thatcher Manufacturing Co. v. N. Y. C. & H. R. R. R. Co.* 126.

MIXED CARLOAD.

Minimum assessed on each of two kinds of grain in one car separated by bulkhead, tariff providing mixed C. L. rate only when all but one of grains were sacked.

Rule amended and reparation ordered on shipment made. *Hewitt & Connor v. C. & N. W. Ry. Co.* 431.

MOLE TRAPS. See **COMMODITIES.****MONOPOLY.**

A railroad may not say that it can retain a monopoly of a certain traffic no matter what its service or what the public necessities require. *Enterprise Fuel Co. v. Pa. R. R. Co.* 219 (222).

MUNICIPAL CHARTER.

A municipal charter is not determinative of the relations which a community bears to the railroad which gives it service. *Enterprise Fuel Co. v. Pa. R. R. Co.* 219 (223).

NAILS. See **COMMODITIES.****NET EARNINGS.** See also **EARNINGS.**

Question of net earnings not important, unless reduction in rates would reduce whole income below reasonable profit point. *Board of Trade of Winston-Salem v. N. & W. Ry. Co.* 12 (17).

NET REVENUE.

Reductions are in net revenues, since cost of operation must remain the same.

Maricopa County Commercial Club v. Wells, Fargo & Co. 182 (185).

NEW LINE.

Rates on new extension made by combination on terminal of old line. *Philip v. C. M. & St. P. Ry. Co.* 418.

NEW STATION.

First shipments moved from new point of production under class rate. Commodity rates thereafter established with relation to other producing points similarly situated. Reparation awarded on bases of commodity rates thus established. *Hutcherson & Co. v. Cent. of Ga. Ry. Co.* 523.

NONEDIBLE GREASE. See **COMMODITIES.****NOTICE OF REFUSAL.**

Commission not convinced that defendants are subject to penalty for failure to notify consignor of refusal of shipment at destination by consignee in time to admit of reconsignment to new destination before expiration of seventy-two hours after completion of transportation service contemplated under original contract of shipment. *Sunnyside Coal Mining Co. v. D. & R. G. R. R. Co.* 558.

OAK LUMBER. See **COMMODITIES.****OIL.** See **COMMODITIES.****OIL BARRELS, EMPTY.** See **COMMODITIES.****OIL MEAL.** See **COMMODITIES.****OIL-WELL SUPPLIES.** See **COMMODITIES.****ORDER.** See also **MAINTENANCE OF RATE.**

Withheld pending decision of court in former case. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 56.

Spokane Case, as to certain defendants, postponed. *City of Spokane v. N. P. Ry. Co.* 179.

ORIGIN.

Carriers ordered to establish reasonable local rate on coal from Sterling, Ill., to Wausa, Nebr., when such shipments originate at Christopher, Ill. *Sunderland Bros. Co. v. C. & N. W. Ry. Co.* 212 (213).

OVERALLS. See **COMMODITIES**.

PACKAGE RATES.

New York and St. Paul to Courtenay, N. Dak. *Sanford v. Western Express Co.* 32.

PACKING-HOUSE PRODUCTS. See **COMMODITIES**.

PAILS, PAPER. See **COMMODITIES**.

PAPER. See **COMMODITIES**.

PAPER, BUILDING. See **COMMODITIES**.

PAPER, ROOFING. See **COMMODITIES**.

PAPER PAILS. See **COMMODITIES**.

PAPER SHELLS. See **COMMODITIES**.

PAPER STOCK. See **COMMODITIES**.

PARTY.

Road party to through rate to longer distance point should be party to complaint of violation of section 4. *Moise Bros. Co. v. C. R. I. & P. Ry. Co.* 550 (552).

PASSENGERS. See also **COLORLED PASSENGERS**.

In freight it is possible to distinguish between different commodities and to establish through route as to one and not as to another; with passengers whatever joint rate is ordered must be kept open to general public. *In re Through Passenger Routes* (300) 303.

Through error, stop-over not provided on ticket; claim for damages for loss of employment at stop-over point too speculative for order of Commission or judgment of court. *Allender v. C. B. & Q. R. R. Co.* 103.

The general rule as to passenger fares must be the same as to freight rates. *Kurtz v. Penn. Co.* 410 (415).

PASSES. See **FREE TRANSPORTATION**.

PAST RATE. See also **ADVANCE**.

Where a long-established rate is raised for a short period and then voluntarily reduced to the former point the presumption is that the advanced rate is unreasonable, but this presumption may be overcome by burden of proof to the contrary. *Sunderland Bros. Co. v. P. M. R. R. Co.* 450 (451).

We can not predicate our conclusion that rate is unreasonable upon mere fact that carrier agreed to lower rate and did lower it after movement began and then canceled rate after movement discontinued. *Alphons Custodis Chimney Construction Co. v. So. Ry. Co.* 584 (586).

Where plant has been established and money invested on faith of certain rates and conditions carrier may not increase those rates to serious disadvantage of such investment *without good cause or reason*. *Douglas & Co. v. C. R. I. & P. Ry. Co.* 232 (237).

Prior to filing complaint rate reduced, former rate admitted unreasonable and willingness to make reparation indicated. Higher rate found unreasonable and reparation awarded. *Ottumwa Pickle Co. v. C. M. & St. P. Ry. Co.* 368.

Changed relationship was in rates which had long existed prior to advances complained of and Commission did not and does not now think reparation should have been awarded. *Pacific Coast Lumber Mfrs. Assn. v. Nor. Pac. Ry. Co.* 465.

Fact that defendants have voluntarily canceled seventy-two hours' limitation period for reconsignment to meet a commercial condition does not afford a just basis for reparation on past shipments. *Sunnyside Coal Mining Co. v. D. & R. G. R. R. Co.* 558.

New short line meets rate long maintained by older long line. If assumed compensatory for long line, it follows it is compensatory for materially shorter line. *Railroad Commissioners of Florida v. S. A. L. Ry.* 1 (5).

PAST RATE—Continued.

Where carriers voluntarily maintain a rate between certain points for a long period of time the presumption is that such rate is reasonable. *Sunderland Bros. Co. v. P. M. R. R. Co.* 450 (451).

Class rate applied, and reparation awarded on basis of former and subsequently reestablished lower commodity proportional rate. *Tyler Commission Co. v. C. M. & St. P. Ry. Co.* 490.

It is not conclusive that because rates were lower at one time, the present rates are unreasonable. *Lagomarcino-Grupe Co. v. Ill. Cent. R. R. Co.* 151 (152).

Rate voluntarily reduced to meet rate via competing line, reparation awarded on shipments made under higher rate. *Crane Bros. v. C. H. & D. Ry. Co.* 571.

Advanced, then reduced; advanced rate held unreasonable and reparation awarded on shipments made. *Milwaukee Falls Chair Co. v. C. M. & St. P. Ry. Co.* 217.

Reduced to basis via another route, reparation awarded. *Trostel & Sons v. M. St. P. & Sault Ste. M. Ry. Co.* 348.

Transit privileges long granted. *Douglas & Co. v. C. R. I. & P. Ry. Co.* 232 (233).

PEACHES. See **COMMODITIES.**

PERISHABLE FRUIT. See **COMMODITIES.**

PERSONALITY OF CONSIGNEE.

In the imposition of freight rates the man who has little with which to pay should not be charged in excess of his more fortunate neighbor. *Association of Union Made Garment Manufacturers v. C. & N. W. Ry. Co.* 405 (406).

Small live animals consigned to laboratories for scientific purposes given merchandise rates. *Davis v. West Jersey Express Co.* 214.

PICKLES. See **COMMODITIES.**

PIG IRON. See **COMMODITIES.**

"PIN YON" SOAP. See **COMMODITIES.**

PIPE. See **COMMODITIES.**

PLAY SUITS. See **COMMODITIES.**

PLEADING.

Complainant discovering at the hearing that it did not have the expense bills or any other memoranda as to shipments made or moneys paid, moved to dismiss.

Ordered accordingly. *Roper Lumber-Cedar Co. v. C. & N. W. Ry. Co.* 397.

Defendants consented to inclusion of subsequent shipments and to disposition of same on basis of shipments first presented. *U. S. v. Adams Express Co.* 394 (395).

Leave to amend petition asked but no amendment filed. *Bluff City Oil Co. v. St. L. I. M. & S. Ry. Co.* 296 (297).

Case submitted on. *Heileman Brewing Co. v. C. M. & St. P. Ry. Co.* 396.

POLES. See **COMMODITIES.**

PORTLAND GATEWAY.

Should be opened to passenger traffic from eastern points to northwestern points.

In re Through Passenger Routes, 300.

POSTS. See **COMMODITIES.**

POSTING TARIFF.

Statute requires carriers to publish their tariffs and to adhere to those tariffs. In no other way could discriminations which have existed be prevented. In enforcement of that statute Commission has no discretion. *Ames Brooks Co. v. Rutland R. R. Co.* 479 (481).

POTATOES. See **COMMODITIES.**

POTENTIAL COMPETITION.

Possibility of actual competition developing on river justifies slight difference in rates between that point and one not on river. *Planters Gin & Compress Co. v. Y. & M. V. R. R. Co.* 131 (133).

POULTRY. See **COMMODITIES.**

POWER OF COMMISSION.

Argued that Commission is without power to direct carrier to grant transit privilege.

There can be no question as to right and power of Commission to order removal of unjust discrimination and to prescribe such reasonable rates and regulations as will effect such removal. *Douglas & Co. v. C. R. I. & P. Ry. Co.* 232.

Act confers authority to investigate complaints alleging unreasonable charges, and, after full hearing on formal complaint, to condemn such charges as are found to have been unreasonable, to award reparation thereunder, and to prescribe a reasonable charge for the future. *Swift & Co. v. C. & A. R. R. Co.* 426 (428).

However strongly the Commission might feel inclined to relieve conditions complained of, its actions must be within the provisions of law and with due and proper regard for the rights of every affected interest. *Commercial Club of Hattiesburg v. Alabama Great Southern R. R. Co.* 534.

Commission has no authority to order construction of *private side track* by railroad company, but its authority is limited to ordering a carrier to make a "switch connection" with a private side track. *Winters Metallic Paint Co. v. C. M. & St. P. Ry. Co.* 587.

Where Commission finds rate exacted to have been unreasonable it may award reparation by the difference between that rate and that which is reasonable, notwithstanding the former was the duly established rate for the time being. *Allen & Co. v. C. M. & St. P. Ry. Co.* 293 (295).

Commission may award damages on past shipments if proof shows rates under which shipments moved were excessive. *Arkansas Fuel Co. v. C. M. & St. P. Ry. Co.* 95 (98).

Act empowers Commission to establish through route and joint rate, provided no satisfactory through route already exists. *In re Through Passenger Routes*, 300 (301).

Commission can only act in making its orders upon the case presented. *City of Spokane v. N. P. Ry. Co.* 179 (181).

POWER OF CONGRESS.

Congress has power to regulate commerce among the states and no contract agreement between corporation which handles that commerce and the party for whom it is handled can interfere with the complete exercise of that power. *In re Contracts of Express Companies*, 246 (253).

Constitution of United States provides that Congress may regulate commerce between the states. *In re Contracts of Express Companies*, 246 (252).

PRECEDENT.

Decision in another case against other carriers operating in different territory under essentially dissimilar circumstances and conditions affords no controlling precedent. *Chicago Lumber & Coal Co. v. Tioga Southeastern Ry. Co.* 323.

Commission's conclusions must be reached with due consideration for conclusions which it has already announced on the same subject and for knowledge which it has gathered with relation thereto in other cases and investigations. *Swift & Co. v. C. & A. R. R. Co.* 426 (429).

For reasons stated in *Chicago Lumber & Coal Co. case, supra*, complaint dismissed. *Winn Parish Lumber Co. v. Ark. So. Ry. Co.* 335.

Keystone Coal Co. v. Ill. Cent. R. R. Co. 336.

Evidence and conclusions in another case applied to this. *Merrian & Holmquist v. U. P. R. R. Co.* 337.

REFERENCE.

If carriers insist upon making preferential rates to each other, they may confidently expect such voluntary action on their part will be accepted and taken as evidence of unreasonableness of higher rates which they may undertake to enforce against other shippers. *Hitchman Coal & Coke Co. v. B. & O. R. R. Co.* 512.

PREFERENCE—Continued.

Carrier as shipper over lines of another carrier may not lawfully be given any preference in application of tariff rates on interstate shipments. *Hitchman Coal & Coke Co. v. B. & O. R. R. Co.* 512.

No warrant in common law for theory that carrier as shipper over lines of another carrier may enjoy or be given a preferred status. *Hitchman Coal & Coke Co. v. B. & O. R. R. Co.* 512.

PREMIUM.

In packages of soap, classification. *Iowa Soap Co. v. C. B. & Q. R. R. Co.* 444.

PRICE.

The freight is so small an item in the cost to the retail dealer or the consumer of both woolen and cotton garments that this does not seem to produce any practical effect. While in fact the discrimination exists it is not sufficient to become obvious. *Association of Union Made Garment Manufacturers v. C. & N. W. Ry. Co.* 405 (408).

In the imposition of freight rates the man who has little with which to pay should not be charged in excess of his more fortunate neighbor. *Association of Union Made Garment Manufacturers v. C. & N. W. Ry. Co.* 405 (406).

The freight rate affects in a degree the price at which the garment can be sold. *Association of Union Made Garment Manufacturers v. C. & N. W. Ry. Co.* 405 (408).

PRIMARY MARKET.

There is much difference of opinion as to what constitutes a primary grain market. *Duncan & Co. v. N. C. & St. L. Ry. Co.* 590 (597).

PRIVATE SIDE TRACK.

Commission has no authority to order construction of *private side track* by railroad company, but its authority is limited to ordering a carrier to make a "switch connection" with a private side track. *Winters Metallic Paint Co. v. C. M. & St. P. Ry. Co.* 587.

PRIVILEGE.

If there is offered to shipper under tariff a right of stopping in transit, reconsignment, storage, or return of freight, he is entitled to the use of such privilege, even though it may later be canceled out of the tariff before the time allowed for the exercise of such right has expired. *Interstate Remedy Co. v. American Express Co.* 436 (439).

Commission has always regarded reconsignment as a privilege, not a right to be demanded by shippers, and has consistently refused to extend the same except to correct unjust discrimination. *Cedar Hill Coal & Coke Co. v. Colo. & So. Ry. Co.* 387.

PROCEDURE.

In administering the law, Commission must be observant of weight to be given evidence adduced before it. *Sanford v. Western Express Co.* 32 (36).

PROHIBITORY RATE.

Carriers may not by any arbitrary adjustment of rates dictate or determine where wheat shall be milled or flour shall be marketed. *Valley Flour Mills v. A. T. & S. F. Ry. Co.* 73 (78).

PROPORTIONAL RATE. See also DIVISIONS.

A proportional rate means a part of or a remainder of the through rate, or it means nothing at all, and in a case of this kind there must be an examination and consideration of the entire rate from point of production to ultimate destination.

Kansas City Transportation Bureau v. A. T. & S. F. Ry. Co. 195 (201).

Lower proportionals from points served by foreign carriers no basis for charge of discrimination against complaining point served by other carriers. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 56 (66).

PROPORTIONAL RATE—Continued.

After long maintenance, advanced, and subsequently reduced to former basis; on shipments made under higher rate, reparation ordered. *Sunderland Bros. Co. v. P. M. R. R. Co.* 450.

Rates Indianapolis to Missouri River unreasonable, because local proportionals between the rivers are unreasonable. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 56 (63).

Grain coming from beyond Missouri River to Mississippi River crossings via Kansas City as compared with via Omaha. *Kansas City Transportation Bureau v. A. T. & S. F. Ry. Co.* 195.

Low proportional rates on through shipments do not justify unreasonable locals. *Board of Trade of Winston-Salem v. N. & W. Ry. Co.* 12 (16).

Kansas City to Mississippi River on hay coming from points beyond Kansas City. *Kansas City Hay Co. v. C. M. & St. P. Ry. Co.* 100.

Hay, Kansas City to Seymour, Iowa, from point beyond Kansas City. *Arkansas Fuel Co. v. C. M. & St. P. Ry. Co.* 95.

PROSPERITY.

Fact that complainant has been prosperous, although a matter to be considered, does not conclusively show that rates are not discriminatory. *Hitchman Coal & Coke Co. v. B. & O. R. R. Co.* 512 (519).

PROTECTING THE RATE. See "MEETING THE RATE."

PUBLIC INTEREST.

We are not permitted so to narrow our view of all interests involved as to look only to the interests of a particular class in the community, and this for sole purpose of vesting in that class what they claim to be their inherent rights, more especially where the enjoyment thereof is to be at the expense of the community at large. *Duncan & Co. v. N. C. & St. L. Ry. Co.* 590 (595).

Decision of Commission must be based upon broad principles of justice, keeping in view welfare of public as well as interests of carriers and shippers. *Chicago Lumber & Coal Co. v. Tioga Southeastern Ry. Co.* 323 (324).

Commission bound to consider relation that rates involved in any case bear to rates at other points and take into account probable result of change in that relation. *Board of Trade of Winston-Salem v. N. & W. Ry. Co.* 12 (17).

PULLMAN COMPANY.

When passenger presents to Pullman conductor an interchangeable mileage ticket and Pennsylvania mileage book entitling him to transportation from New Castle to New York, he presents such transportation for that journey as is "required by the railway company." *Kurtz v. Penn. Co.* 410 (416).

So long as railroad companies can properly maintain joint through rate higher than combination of locals, they may insist that through Pullman space shall only be sold upon presentation of through ticket. *Kurtz v. Penn. Co.* 410. (415).

Maintained at joint expense of Pullman Company and railroad companies interested. Railway may properly exercise voice in determining kind of transportation which will entitle holder to Pullman accommodations. *Kurtz v. Penn. Co.* 410 (414).

Discrimination in accommodations to colored passengers not found to exist. *Gaines v. S. A. L. Ry.* 471.

Is a common carrier subject to the jurisdiction of this Commission. *Kurtz v. Penn. Co.* 410 (414).

RAILROAD CONSIGNEE.

Carrier as shipper over lines of another carrier may not lawfully be given any preference in application of tariff rates on interstate shipments. *Hitchman Coal & Coke Co. v. B. & O. R. R. Co.* 512.

NGE CATTLE. See **COMMODITIES.**

RAW MATERIAL.

If cost of transporting is very much less than manufactured article, then process of manufacturing can, so far as freight rate goes, be more advantageously conducted in the vicinity where the garment is finally sold. *Association of Union Made Garment Manufacturers v. C. & N. W. Ry. Co.* 405 (408).

There is limit to products which can reasonably be transported at raw-material rate. *Douglas & Co. v. C. R. I. & P. Ry. Co.* 232.

REASONABLE RATE.

Commission can not indulge in speculation as to motives which actuate carriers in fixing an adjustment of freight rates. We can only determine whether the rates in question are unreasonable or unjustly discriminatory. *Grand Junction Mining & Fuel Co. v. Colo. Mid. Ry. Co.* 452 (456).

Commission can not and will not accept as conclusive any stipulation of parties as to reasonableness of rate or transportation regulation. *Swift & Co. v. C. & A. R. R. Co.* 426 (428).

Rate voluntarily reduced because it was unreasonable. The presumption is that it is the reasonable rate to-day. *Tully Grain Co. v. Ft. S. & W. R. R. Co.* 28 (29).

Discrimination alleged, but, from lack of one party, rates found unreasonable. *Cedar Hill Coal & Coke Co. v. A. T. & S. F. Ry. Co.* 402 (403).

Interstate rates must be reasonable in themselves. *Railroad Commission of Wisconsin v. C. & N. W. Ry. Co.* 85 (91).

What is reasonable for one carrier might not be reasonable for another. *Swift & Co. v. C. & A. R. R. Co.* 426 (429).

"REASONABLE OR SATISFACTORY." See WORDS AND PHRASES.

REBILLING. See also RECONSIGNMENT.

Privilege at Nashville operates as a device by which traffic may move at less than lawful tariff rate. *Duncan & Co. v. N. C. & St. L. Ry. Co.* 590.

RECEIVERSHIP.

S. A. L. in hands of receiver; but unfavorable financial condition of defendant can not lawfully be remedied by imposing unreasonable rates. *Railroad Commissioners of Florida v. S. A. L. Ry.* 1 (5).

Claim against line in hands of receiver; line sold; order of reparation directed against old line and receiver. *Pepperell Manufacturing Co. v. Texas So. Ry. Co.* 353.

RECONSIGNMENT. See also REBILLING.

Complainant shipped coal from Rugby, Colo., to Iuka, Kans., but on arrival was refused by consignee, and, after being held 30 days, was reshipped back to Preston, Kans., for which local rate was charged. No warrant for application of charges upon any other basis than combination of locals. *Cedar Hill Coal & Coke Co. v. Colo. & So. Ry. Co.* 560.

If there is offered to shipper under tariff a right of reconsignment, he is entitled to the use of such privilege, though it may be later canceled out of the tariff before the time allowed for the exercise of such right has expired. *Interstate Remedy Co. v. American Express Co.* 436 (439).

Commission has always regarded reconsignment as a privilege, not a right to be demanded by shippers, and has consistently refused to extend the same except to correct unjust discrimination. *Cedar Hill Coal & Coke Co. v. Colo. & So. Ry. Co.* 387.

Shipper has right to consign to given point, pay charges, assume custody and take possession of property, and later reship to another point under rates lawfully applicable to such shipment. *Wood Butter Co. v. C. C. C. & St. L. Ry. Co.* 374 (375).

Commission could not make reconsignment privilege retroactive in practical effect by ordering reparation on shipments made at a time when the same was not available. *Sunnyside Coal Mining Co. v. D. & R. G. R. R. Co.* 558 (559).

RECONSIGNMENT—Continued.

Commission does not feel justified in initiating or extending the application of reconsignment privileges unless deemed necessary to correct unjust discrimination. *Sunnyside Coal Mining Co. v. D. & R. G. R. R. Co.* 558.

Shipper can not defeat application of joint through rate by constituting carrier its agent to collect charges to junction and reship to destination. *Stock Yards Cotton & Linseed Meal Co. v. C. M. & St. P. Ry. Co.* 366 (367).

Hay, from Kansas to St. Louis, reconsigned to southeastern territory at balance of through rate. *Rodehaver v. M. K. & T. Ry. Co.* 146.

To avoid payment of higher through rate without payment of charges to intermediate point. *Wood Butter Co. v. C. C. C. & St. L. Ry. Co.* 374.

RECORD. See also JUDICIAL NOTICE.

Former case made part of present case to prevent taking large amount of testimony.

Lagomarcino-Grupe Co. v. Ill. Cent. R. R. Co. 151 (152).

Any order in this case must be limited to the situation under the petition filed.

Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co. 56 (71).

We can not legitimately go beyond a decision in respect of those rates specifically attacked. *Sanford v. Western Express Co.* 32.

Commission can only act in making its orders upon the case presented. *City of Spokane v. N. P. Ry. Co.* 179 (181).

REFRIGERATION.

Considering that strawberries and peaches move under refrigeration and at high speed, while apples do not, rates prescribed are not unreasonably low. *Ozark Fruit Growers Asso. v. St. L. & S. F. R. R. Co.* 134 (141).

Nonrefrigerated freight should be hauled at something less than refrigerated products. *Ozark Fruit Growers Asso. v. St. L. & S. F. R. R. Co.* 106 (115).

Ozark fruit region to points in west, north, and east not unreasonable. *Ozark Fruit Growers Asso. v. St. L. & S. F. R. R. Co.* 153.

Car company allows to carrier \$1.10 per car when railroad performs loading service. *Voorhees v. A. C. L. R. R. Co.* 42 (43).

Fruit, Ozark region to points north, east, and west. *Ozark Fruit Growers Asso. v. St. L. & S. F. R. R. Co.* 106.

Cases reviewed. *Swift & Co. v. C. & A. R. R. Co.* 426 (429).

REFUSAL OF SHIPMENT.

Commission not convinced that defendants are subject to penalty in this case for failure to notify consignor of refusal of shipment at destination by consignee in time to admit of reconsignment to new destination before expiration of seventy-two hours after completion of transportation service contemplated under original contract of shipment. *Sunnyside Coal Mining Co. v. D. & R. G. R. R. Co.* 558.

REHEARING.

Petitions for entertaining supplemental complaint, for modification of orders, and for vacation of orders denied. *Pacific Coast Lumber Mfgs. Assn. v. Nor. Pac. Ry. Co.* 465.

Petition by defendant granted. *Cedar Hill Coal & Coke Co. v. A. T. & S. F. Ry. Co.* 402.

Petition by complainant. *Wilson Produce Co. v. Pa. R. R. Co.* 116.

RELATIVE RATES.

Not unlawful for defendants to meet in rates from C. F. A. territory and from Atlantic ports competition created at Meridian and Jackson by the lines from St. Louis and by the Illinois Central from Louisville without also giving the same rates to Hattiesburg. *Commercial Club of Hattiesburg v. Alabama Great Southern R. R. Co.* 534 (546).

No requirement in law that charges of one carrier shall always be exactly equal to those of competing carrier. The law requires that the charges of each shall be reasonable. What is reasonable for one might not be reasonable for another. *Swift & Co. v. C. & A. R. R. Co.* 426 (429).

RELATIVE RATES—Continued.

Complainant seeks lower rates and joint through rates on coal from mines in western Colorado to various points in Western States, and comparison is made with rates per ton per mile from other coal-producing points. *Grand Junction Mining & Fuel Co. v. Colo. Mid. Ry. Co.* 452.

Walsenburg district, Colo., to points in Kansas, Nebraska, Oklahoma, Texas, and New Mexico, compared with rates from other points to consuming markets; circumstances and conditions found to be dissimilar. *Cedar Hill Coal & Coke Co. v. Colo. & So. Ry. Co.* 387.

A mere comparison of revenue per ton per mile, even when showing higher from complainant's mines, not conclusive as applied in a country where nature has interposed such obstacles as to make operating conditions so dissimilar. *Grand Junction Mining & Fuel Co. v. Colo. Mid. Ry. Co.* 452 (457).

Complaint attacks as unreasonable and unjustly discriminatory the general adjustment of rates to and from Hattiesburg, Miss., as compared with Gulf ports and Meridian and Jackson, Miss. *Commercial Club of Hattiesburg v. Alabama Great Southern R. R. Co.* 534.

Because delivering carrier sees fit to state that it will protect rate made by its competitor, but fails to do so, Commission can not hold that such lower rate is necessarily reasonable. *De Camp Bros. v. So. Ry. Co.* 144.

Rate-per-ton-per-mile rule excludes consideration of other circumstances and conditions, and can not be accepted as controlling in determining the reasonableness of rates. *Cedar Hill Coal & Coke Co. v. Colo. & So. Ry. Co.* 387.

Lower proportionals from points served by foreign carriers no basis for charge of discrimination against complaining point served by other carriers. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 56 (66).

Indianapolis to Arkansas, Louisiana, Oklahoma, and Texas compared with Chicago, Ohio River points, and East St. Louis to same destination. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 254.

Most satisfactory comparison to ascertain whether relative injustice is being done one section against another is through earnings per car. *Ozark Fruit Growers Asso. v. St. L. & S. F. R. R. Co.* 106 (114).

Kokomo and Muncie, Ind., to Arkansas, through Mississippi River crossings, compared with Chicago through same crossings and over same lines to destination. *Indiana Steel & Wire Co. v. C. R. I. & P. Ry. Co.* 155.

Reduction ordered in New York-Detroit rate; proportionate reduction made to Cleveland in view of relationship long existing between the two cities. *American Agricultural Chemical Co. v. Erie R. R. Co.* 320.

Winston-Salem and Durham, N. C., compared with points east of Lynchburg and Norfolk, Va., on coal from Pocahontas district, Va. *Board of Trade of Winston-Salem v. N. & W. Ry. Co.* 12.

Combination rate found unreasonable by comparison with rate to same point via another route, rate charged being subsequently reduced to that via other route. *Swift & Co. v. T. & P. Ry. Co.* 442.

Export rate on threshing machines from Minneapolis to New York compared with rate to New Orleans for export. *Minneapolis Threshing Machine Co. v. C. St. P. M. & O. Ry. Co.* 193.

Hawthorne and Gainesville, Fla., compared with Alachua, Fla., to Savannah, Ga., approximately equal distances, on sea island cotton. *Railroad Commissioners of Florida v. S. A. L. Ry.* 1.

Comparison of rates of express companies in other localities is more important than in determination of reasonableness of freight charges. *Sanford v. Western Express Co.* 32 (35).

Mendota, Minn., to La Crosse, Wis., clam shells, compared with rate between same points on another line. *Wisconsin Pearl Button Co. v. C. St. P. M. & O. Ry. Co.* 80.

RELATIVE RATES—Continued.

Grain, coming from beyond Missouri River, to Mississippi River, via Kansas City as compared with via Omaha. Kansas City Transportation Bureau v. A. T. & S. F. Ry. Co. 195.

It is general rate-making policy in this territory that rates to Chicago and Milwaukee shall be equal. Railroad Commission of Wisconsin v. C. & N. W. Ry. Co. 85 (89).

Indianapolis to Winona and St. Paul compared with St. Louis and Chicago to same points. Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co. 276.

Chicago to South Bend, Ind., compared with Chicago to Beloit, Wis., on paper stock. La Salle Paper Co. v. Mich. Cent. R. R. Co. 149 (150).

Points on one line compared with points on branch of same line equally distant from a concentrating point. Bartling Grain Co. v. Mo. Pac. Ry. Co. 494.

Group east of Ohio River compared with rates to western points from group on west bank of river. Hitchman Coal & Coke Co. v. B. & O. R. R. Co. 512.

Hermanville, Miss., compared with Port Gibson, Miss., on cotton to New Orleans. Planters Gin & Compress Co. v. Y. & M. V. R. R. Co. 131.

Fort Dodge, Iowa, compared with other Iowa points, on traffic from Illinois. Fort Dodge Commercial Club v. Ill. Cent. R. R. Co. 572.

Indianapolis compared with Chicago and Cincinnati to southern points. Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co. 142.

Linndale, because of proximity to Cleveland, ought to take Cleveland rate. American Agricultural Chemical Co. v. Erie R. R. Co. 320.

Through rate, plus local, compared with joint through rate to farther distant point. Stone-Ordean-Wells Co. v. N. P. Ry. Co. 313.

Indianapolis to Missouri River compared with Chicago. Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co. 56.

RELEASED RATE.

Shipment not released and first-class rate assessed; released valuation found too low and released rate applied. Michael Cohen & Co. v. So. Ry. Co. 177.

REPARATION.

Willingness of shipper to receive, and of carrier to pay, reparation upon certain traffic or under certain rates can be approved only under clear and decisive showing of facts which would lead Commission to award that reparation in opposition to that carrier's wishes, and under which it would also award reparation to all others who might have shipped during the same period under the same rate and under substantially similar circumstances and conditions. Swift & Co. v. C. & A. R. R. Co. 426 (429).

Carrier whose lawful tariff is higher than that of a competing line has no right to solicit or accept shipment with understanding or expectation that order of reparation will be sought at hands of Commission for purpose of equalizing to shipper a rate which he could have secured by giving shipment to another carrier. Swift & Co. v. C. & A. R. R. Co. 426 (430).

Where Commission finds rate exacted to have been unreasonable it may award reparation by the difference between that rate and that which is reasonable, notwithstanding the former was the duly established rate for the time being. Allen & Co. v. C. M. & St. P. Ry. Co. 293 (295).

Act confers authority on Commission to investigate complaints alleging unreasonable charges, and, after full hearing on formal complaint, to condemn such charges as are found to have been unreasonable and to award reparation thereunder. Swift & Co. v. C. & A. R. R. Co. 426 (428).

No reparation is or should be granted on informal proceedings which would not be awarded under same set of facts in a contested case and in face of defendant's opposition instead of its admission. Swift & Co. v. C. & A. R. R. Co. 426 (428).

REPARATION—Continued.

Fact that defendants have voluntarily canceled seventy-two hours' limitation period to meet a commercial condition does not afford a just basis for reparation on past shipments. *Sunnyside Coal Mining Co. v. D. & R. G. R. R. Co.* 558.

Commission could not make reconsignment privilege retroactive in practical effect by ordering reparation on shipments made at a time when the same was not available. *Sunnyside Coal Mining Co. v. D. & R. G. R. R. Co.* 558 (559).

Changed relationship was in rates which had long existed prior to advances complained of, and Commission did not and does not now think reparation should have been awarded. *Pacific Coast Lumber Mfrs. Assn. v. Nor. Pac. Ry. Co.* 465 (467).

Rule that no presumption of liability for reparation to follow voluntary reduction does not apply after formal complaint and refusal of defendants to make reparation. *Diehl v. C. M. & St. P. Ry. Co.* 190 (192).

Commission makes no order for reparation on account of alleged excessive rate where charges have not been paid, though property replevined under bond. *Bluff City Oil Co. v. St. L. I. M. & S. Ry. Co.* 296 (297).

Act affords shipper a means of recovering excessive charges on shipments made by him in the past under rates that were unjust and unreasonable. *Arkansas Fuel Co. v. C. M. & St. P. Ry. Co.* 95.

Overcharge granted one complaining shipper carries presumption of right of other shippers under like circumstances to same refund. *Davenport Commercial Club v. Y. & M. V. R. R. Co.* 209 (211).

Through rate exceeded combination of locals, but reparation awarded only down to basis of Commission's order in another case. *Humbird Lumber Co. v. Nor. Pac. Ry. Co.* 449.

Complainant entitled to reparation by difference between amount collected and what would have been assessed under a reasonable rate. *Michael Cohen & Co. v. So. Ry. Co.* 177 (178).

Right of complainant association to maintain an action for damages, beneficiaries of which will be its members, considered. *California Commercial Assn. v. Wells Fargo & Co.* 458 (463).

View expressed in *Arkansas Fuel Co.*, 16 I. C. C., 95, adhered to. *Kansas City Hay Co. v. C. M. & St. P. Ry. Co.* 100.

Discrimination in elevator allowances against complainant found, in favor of competitors. *Merriam & Holmquist v. U. P. R. R. Co.* 337.

REPARATION—CLASSIFIED LIST.**Discrimination:**

Davenport Commercial Club v. Y. & M. V. R. R. Co. 209.

Merriam & Holmquist v. U. P. R. R. Co. 337.

Sunderland Bros. Co. v. C. & N. W. Ry. Co. 433.

Misrouting:

Hendrickson Lumber Co. v. K. C. S. Ry. Co. 129.

Hill & Webb v. M. K. & T. Ry. Co. 569.

Marshall & Michel Grain Co. v. St. L. & S. F. R. R. Co. 385.

Noble v. St. L. & S. F. R. R. Co. 186.

Thatcher Mfg. Co. v. N. Y. C. & H. R. R. R. Co. 126.

Overcharge:

Alphons Custodis Chimney Construction Co. v. Sd. Ry. Co. 584.

California Commercial Assn. v. Wells, Fargo & Co. 458.

Duluth Log Co. v. C. St. P. M. & O. Ry. Co. 38.

Goddard Co. v. C. C. C. & St. L. Ry. Co. 298.

Interstate Remedy Co. v. American Express Co. 436.

Milwaukee Falls Chair Co. v. C. M. & St. P. Ry. Co. 217.

REPARATION—CLASSIFIED LIST—Continued.**Overcharge—Continued.**

- Newton Gum Co. v. C. B. & Q. R. R. Co. 341.
- Otis Elevator Co. v. C. G. W. Ry. Co. 502.
- Racine-Sartley Co. v. C. M. & St. P. Ry. Co. 488.
- Stone-Ordean-Wellis Co. v. C. B. & Q. R. R. Co. 30.
- Voorhees v. A. C. L. R. R. Co. 42, 45.

Unreasonable rate:

- Allen & Co. v. C. M. & St. P. Ry. Co. 293.
- Alphons Custodis Chimney Construction Co. v. So. Ry. Co. 584.
- Alphons Custodis Chimney Construction Co. v. Vandalia R. R. Co. 600.
- American Agricultural Chemical Co. v. Erie R. R. Co. 320.
- American Beet Sugar Co. v. C. R. I. & P. Ry. Co. 288.
- Arkansas Fuel Co. v. C. M. & St. P. Ry. Co. 95.
- Barrett Manufacturing Co. v. Graham & Morton Co. 399.
- Beekman Lumber Co. v. C. R. I. & P. Ry. Co. 528.
- Blodgett Milling Co. v. C. M. & St. P. Ry. Co. 384.
- Bluff City Oil Co. v. St. L. I. M. & S. Ry. Co. 296.
- Carlin's Sons Co. v. B. & O. R. R. Co. 477.
- Carstens Packing Co. v. C. M. & St. P. Ry. Co. 469.
- Chilton Malting Co. v. C. M. & St. P. Ry. Co. 10.
- Crane Bros. v. C. H. & D. Ry. Co. 571.
- Darbyshire & Evans v. E. P. & S. W. R. R. Co. 435.
- Davenport Commercial Club v. Y. & M. V. R. R. Co. 209.
- Dayton Chamber of Commerce v. C. M. & St. P. Ry. Co. 82.
- Diehl v. C. M. & St. P. Ry. Co. 190.
- DuPont de Nemours Powder Co. v. N. Y. N. H. & H. R. R. Co. 351.
- Empire Oil Works v. C. M. & St. P. Ry. Co. 401.
- Gilchrist v. L. E. & W. R. R. Co. 318.
- Great Western Oil Co. v. A. T. & S. F. Ry. Co. 505.
- Heileman Brewing Co. v. C. M. & St. P. Ry. Co. 396.
- Hewitt & Connor v. C. & N. W. Ry. Co. 431.
- Humbird Lumber Co. v. Nor. Pac. Ry. Co. 449.
- Hutcheson & Co. v. Cent. of Ga. Ry. Co. 523.
- Kansas City Hay Co. v. C. M. & St. P. Ry. Co. 100.
- Lee-Warren Milling Co. v. C. R. I. & P. Ry. Co. 422.
- Lindsay Bros. v. B. & O. S. W. R. R. Co. 6.
- Lindsay Bros. v. G. R. & I. Ry. Co. 441.
- MacGillis & Gibbs Co. v. C. & E. I. R. R. Co. 40.
- Michael Cohen & Co. v. So. Ry. Co. 177.
- Milwaukee Falls Chair Co. v. C. M. & St. P. Ry. Co. 217.
- Mineral Point Zinc Co. v. Wabash R. R. Co. 440.
- Neufeld v. C. M. & St. P. Ry. Co. 26.
- New Albany Box & Basket Co. v. Ill. Cent. R. R. Co. 315.
- Newark Machine Co. v. P. C. C. & St. L. Ry. Co. 291.
- Noble v. C. M. & St. P. Ry. Co. 420.
- Noble v. St. L. & S. F. R. R. Co. 186.
- Otis Elevator Co. v. C. G. W. Ry. Co. 502.
- Ottumwa Pickle Co. v. C. M. & St. P. Ry. Co. 368.
- Pepperell Manufacturing Co. v. Texas So. Ry. Co. 353.
- Philip v. C. M. & St. P. Ry. Co. 418.
- Roper Lumber-Cedar Co. v. C. & N. W. Ry. Co. 382.
- Scully Steel & Iron Co. v. L. S. & M. S. Ry. Co. 358.
- Smith Manufacturing Co. v. C. M. & G. Ry. Co. 447.
- Snook & Janes v. A. T. & S. F. Ry. Co. 356.

REPARATION—CLASSIFIED LIST—Continued.**Unreasonable rate—Continued.**

Stock Yards Cotton & Linseed Meal Co. *v.* C. M. & St. P. Ry. Co. 366.

Stone-Ordean-Wells Co. *v.* C. B. & Q. R. R. Co. 30.

Stone-Ordean-Wells Co. *v.* N. P. Ry. Co. 313.

Sunderland Bros. Co. *v.* C. & N. W. Ry. Co. 212, 433.

Sunderland Bros. Co. *v.* P. M. R. R. Co. 450.

Swift & Co. *v.* T. & P. Ry. Co. 442.

Thomas *v.* C. M. & St. P. Ry. Co. 364.

Trostel & Sons *v.* M. St. P. & Sault Ste. Marie Ry. Co. 348.

Tully Grain Co. *v.* Ft. S. & W. R. R. Co. 28.

Tyler Commission Co. *v.* C. M. & St. P. Ry. Co. 490.

U. S. *v.* Adams Express Co. 394.

Virginia-Carolina Chemical Co. *v.* St. L. S. W. Ry. Co. 49.

Voorhees *v.* A. C. L. R. R. Co. 45.

Wells-Higman Co. *v.* G. R. & I. Ry. Co. 339.

Windsor Milling & Elevator Co. *v.* Colo. & So. Ry. Co. 349.

Winters Metallic Paint Co. *v.* C. M. & St. P. Ry. Co. 562.

Wisconsin Pearl Button Co. *v.* C. St. P. M. & O. Ry. Co. 80.

Unreasonable rule:

Beggs *v.* Wabash R. R. Co. 208.

Hanna Coal Co. *v.* N. P. Ry. Co. 289.

Hewitt & Connor *v.* C. & N. W. Ry. Co. 431.

Kaye & Carter Lumber Co. *v.* Minn. & Int. Ry. Co. 285.

Roper Lumber-Cedar Co. *v.* C. & N. W. Ry. Co. 382.

REPLEVIN.

Consignee replevined car held for alleged excessive rate, giving bond to abide all damages and costs. Bluff City Oil Co. *v.* St. L. I. M. & S. Ry. Co. 296 (297).

RES ADJUDICATA. See PRECEDENT.**RESHIPMENT. See also RECONSIGNMENT.**

Privilege at Nashville operates as a device by which traffic may move at less than lawful tariff rate. Duncan & Co. *v.* N. C. & St. L. Ry. Co. 590.

RETROACTIVE.

Schedule of rates extended by carrier to shipping public may be canceled upon giving thirty days' notice in conformity with law. But such cancellation is not to be construed as a withdrawal of all rights arising under such tariff to those who have availed themselves of its provisions prior to date such tariff dies. Interstate Remedy Co. *v.* American Express Co. 436 (438).

Obligation to carry on basis of published rates and minimum weights ought to have been covered in tariffs; and tariffs were unreasonable in not containing such provision when shipments were made. Reparation ordered. Kaye & Carter Lumber Co. *v.* Minn. & Int. Ry. Co. 285 (287).

Commission could not make reconsignment privilege retroactive in practical effect by ordering reparation on shipments made at a time when the same was not available. Sunnyside Coal Mining Co. *v.* D. & R. G. R. R. Co. 558 (559).

RETURN OF CARS.

Condition precedent to payment of elevator allowance held unlawful in another case. Merriam & Holmquist *v.* U. P. R. R. Co. 337.

RETURNED SHIPMENTS.

If there is offered to shipper under tariff a right of return of freight, he is entitled to the use of such privilege, though it may be later canceled out of the tariff before the time allowed for the exercise of such right has expired. Interstate Remedy Co. *v.* American Express Co. 436 (439).

Refused packages of C. O. D. medicines, at reduced rates. Interstate Remedy Co. *v.* American Express Co. 436.

REVENUES. See also **Tax-per-Mile.**

If complainant labored under some form of discrimination or rates were so high as to unduly burden movement of traffic, Commission's duty to interfere, though that did involve reduction of rates. *Association of Union Made Garment Manufacturers v. C. & N. W. Ry. Co.* 405 (409).

On coal from Walsenburg district to consuming markets must be divided between several carriers, while from other places the carriage is performed by one line. *Cedar Hill Coal & Coke Co. v. Colo. & So. Ry. Co.* 387 (391).

High minimum and low rate automatically adjust themselves to needs of shipper, while returning to carrier same revenue per car. *Ozark Fruit Growers Asso. v. St. L. & S. F. R. R. Co.* 106 (109).

Reductions (in rates) are in the net revenues of the (express) company, since cost of operation must remain the same. *Maricopa County Commercial Club v. Wells Fargo & Co.* 182 (184).

Unfavorable financial condition of defendant can not lawfully be remedied by imposing unreasonable rates. *Railroad Commissioners of Florida v. S. A. L. Ry.* 1 (5).

Any change in classification affects. *Association of Union Made Garment Manufacturers v. C. & N. W. Ry. Co.* 405 (409).

Wells Fargo & Co. are excessive. *Maricopa County Commercial Club v. Wells Fargo & Co.* 182 (184).

REVIEW.

In this case establishment of proper relationship involves reductions in rates which were increased under decision in another case. *Valley Flour Mills v. A. T. & S. F. Ry. Co.* 73 (79).

REWEIGHING.

At destination to ascertain actual weight. *Duluth Log Co. v. C. St. P. M. & O. Ry. Co.* 38.

RICE. See **COMMODITIES.**

RISK. See **MEASURE OF RATE.**

ROCK SALT. See **COMMODITIES.**

ROOFING PAPER. See **COMMODITIES.**

ROUTE.

Caprice or proper desire of occasional passenger should not govern; but if any considerable part of traveling public reasonably prefer to use some other route than one existing, then existing route can not be called reasonable and satisfactory. *In re Through Passenger Routes*, 300 (303).

No justification for requiring shippers at one point to forward via circuitous routes to protect rates of other initial carriers from a farther distant point. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 56 (69).

No duty rested upon carrier to hunt up some unnatural connection by which traffic might reach destination at slightly lower transportation charge. *Wheeler Lumber, Bridge & Supply Co. v. C. M. & St. P. Ry. Co.* 525 (527).

No reason why community should insist upon transportation by more circuitous route against will of that company. *City of Spokane v. N. P. Ry. Co.* 179 (180).

Haul via one route being more circuitous, not just to force carriers to meet lower rate covering shorter haul via another route. *Winters Metallic Paint Co. v. C. M. & St. P. Ry. Co.* 562 (563).

For carrier's convenience shipment sent over route other than that via which the rate charged applied. *Lee-Warren Milling Co. v. C. R. I. & P. Ry. Co.* 422.

Very slight differences in rates on grain decide routes over which it will move. *Kansas City Transportation Bureau v. A. T. & S. F. Ry. Co.* 195 (198).

A route satisfactory to one kind of freight might not be satisfactory with respect to another. *In re Through Passenger Routes*, 300 (303).

ROUTE—Continued.

Carrier disregarded its duty to forward via cheapest reasonable available route.

Hendrickson Lumber Co. v. K. C. S. Ry. Co. 129.

ROUTING INSTRUCTIONS. See **INSTRUCTIONS.****RULE.**

Requiring notation of ultimate destination on bill of lading, in order to obtain through rate with milling in transit, found unreasonable. Roper Lumber-Cedar Co. v. C. & N. W. Ry. Co. 382.

RYE. See **COMMODITIES.****SAFETY FUSE.** See **COMMODITIES.****SALT.** See **COMMODITIES.****"SATISFACTORY."** See **WORDS AND PHRASES.****SAWDUST.** See **COMMODITIES.****SEA ISLAND COTTON.** See **COMMODITIES.****SEASON.**

Special facilities for handling of truck lie idle between seasons. Voorhees v. A. C. L. R. R. Co. 45 (47).

SECTION ONE.

From language of this section it is clear Commission has no authority to order construction of *private side track* by railroad company, but its authority is limited to ordering a carrier to make a "switch connection" *with* a private side track.

Winters Metallic Paint Co. v. C. M. & St. P. Ry. Co. 587.

Considered. Arkansas Fuel Co. v. C. M. & St. P. Ry. Co. 95 (97).

Enterprise Fuel Co. v. Pa. R. R. Co. 219 (221).

In re Contracts of Express Companies 246 (249).

SECTION THREE. See also **DISCRIMINATION.**

Such dissimilarity of circumstances and conditions (water competition) does not relieve carrier altogether from restraint of third section. Planters Gin & Compress Co. v. Y. & M. V. R. R. Co. 131 (133).

Considered. Enterprise Fuel Co. v. Pa. R. R. Co. 219 (221).

SECTION FOUR. See **LONG AND SHORT HAUL.****SECTION SIX.** See also **TARIFFS.**

Requires that carriers subject to act shall in all cases publish rates at which they afford transportation services and that rates specified shall in every case be observed. *In re* Contracts of Express Companies, 246 (249).

Purpose to prevent discrimination by making it possible to obtain from tariffs just what charges are. Voorhees v. A. C. L. R. R. Co. 42 (44).

Where elevation is included in rate, tariff should so specify. Ames Brooks Co. v. Rutland R. R. Co. 479 (481).

Considered. Arkansas Fuel Co. v. C. M. & St. P. Ry. Co. 95 (97).

SECTION EIGHT.

Considered. Arkansas Fuel Co. v. C. M. & St. P. Ry. Co. 95 (98).

SECTION NINE.

Considered. Arkansas Fuel Co. v. C. M. & St. P. Ry. Co. 95 (98).

SECTION THIRTEEN.

Considered. Arkansas Fuel Co. v. C. M. & St. P. Ry. Co. 95 (98).

SECTION FOURTEEN.

Considered. Arkansas Fuel Co. v. C. M. & St. P. Ry. Co. 95 (98).

SECTION FIFTEEN.

Considered. Arkansas Fuel Co. v. C. M. & St. P. Ry. Co. 95 (96).

Quoted and considered. Enterprise Fuel Co. v. Pa. R. R. Co. 219 (220).

SECTION SIXTEEN.

Considered. Arkansas Fuel Co. v. C. M. & St. P. Ry. Co. 95 (98).

SHELLS, CLAM. See **COMMODITIES.**

SHELLS, LOADED. See **COMMODITIES**.

SHINGLES. See **COMMODITIES**.

"SHIPPER." See **WORDS AND PHRASES**.

SHIPPER'S ROUTING INSTRUCTIONS. See **INSTRUCTIONS**.

SHIPPING COMMUNITY. See **STATION**.

SHIRTS. See **COMMODITIES**.

SHORT LINE.

St. Louis reaches St. Paul and Winona by direct through routes, which must compete not only with each other, but also with boat lines on Mississippi River. Distinguished from Indianapolis. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 276 (282).

In common practice, the short line between two designated points makes the rates between those points. *Railroad Commissioners of Florida v. S. A. L. Ry.* 1 (4).

SHOW CASES. See **COMMODITIES**.

SIDE TRACK. See **PRIVATE SIDE TRACK**.

SIZE OF CAR. See **CAR SIZE**.

SLEEPING CAR ACCOMMODATIONS.

Discrimination against colored passengers not found to exist. *Gaines v. S. A. L. Ry.* 471.

SNAPPED CORN. See **COMMODITIES**.

SOAP. See **COMMODITIES**.

SOFT COAL. See **COMMODITIES**.

SPECIAL REPARATION.

No reparation is or should be granted on informal proceedings which would not be awarded under same set of facts in a contested case and in face of defendant's opposition instead of its admission. *Swift & Co. v. C. & A. R. R. Co.* 426 (428).

SPECIAL SERVICE.

First consideration in an express service is the quality of the service itself, and compensation allowed should be adequate to a service of high quality. *Maricopa County Commercial Club v. Wells Fargo & Co.* 182 (185).

Less than carload shipments of cheese handled in special refrigerator cars. *Railroad Commission of Wisconsin v. C. & N. W. Ry. Co.* 85 (88).

Transportation of perishable fruit. *Ozark Fruit Growers Asso. v. St. L. & S. F. R. R. Co.* 106 (111).

Necessary for transportation of truck. *Voorhees v. A. C. L. R. R. Co.* 45 (47).

SPECULATIVE DAMAGES. See **DAMAGES**.

STARCH. See **COMMODITIES**.

STARE DECISIS. See **PRECEDENT**.

STATE COMMISSION.

Commission will always give all due and respectful consideration to decisions of State Commissions. *Railroad Commission of Wisconsin v. C. & N. W. Ry. Co.* 85 (89).

STATE LAW.

Reducing track-storage charges, not applicable to interstate business. *Wilson produce Co. v. Pa. R. R. Co.* 116 (121).

STATE RATE.

Passenger may properly pay fare to state line and again from state line to destination, though he thereby obtains through transportation for less than published through rate, and though deliberately seeking this means of obtaining transportation at less than through rate. *Kurtz v. Penn. Co.* 410 (413).

No reason why, if \$1 is a just charge from New Castle to Pittsburg for the local service, a higher rate should be applied for through interstate transportation. *Kurtz v. Penn. Co.* 410 (415).

STATE RATE—Continued.

Low State concentration rate not competitive with interstate rate complained of; therefore, it can not be said that one compels the other. *Railroad Commission of Wisconsin v. C. & N. W. Ry. Co.* 85 (91).

Low, no reason for exacting unreasonable interstate rates. *Fort Dodge Commercial Club v. Ill. Cent. R. R. Co.* 572 (579).

STATION.

A city which embraces a wide area within its limits may comprise one or more shipping communities to and from which through routes should be established. *Enterprise Fuel Co. v. Pa. R. R. Co.* 219.

STEEL. See **COMMODITIES**.

STEEL ARTICLES. See **COMMODITIES**.

STIPULATION.

Commission can not and will not accept as conclusive any stipulation of parties as to reasonableness of rate or transportation regulation. *Swift & Co. v. C. & A. R. R. Co.* 426 (428).

STOCK OWNERSHIP.

While Pennsylvania Railroad Company owns most of the stock and therefore controls the Pennsylvania Company, operations of the two are kept entirely distinct, and case must be disposed of as though there were no common interest in the management of the two. *Kurtz v. Penn. Co.* 410.

STONE. See **COMMODITIES**.

STOPPAGE IN TRANSIT.

If there is offered to shipper under tariff a right of stopping in transit, he is entitled to the use of such privilege, though it may be later canceled out of the tariff before the time allowed for the exercise of such right has expired. *Interstate Remedy Co. v. American Express Co.* 436 (439).

STOP-OVER.

Through error, not provided on ticket; claim for damages for loss of employment at stop-over point too speculative for order of Commission or judgment of court. *Allender v. C. B. & Q. R. R. Co.* 103.

STORAGE CHARGE.

If there is offered to shipper under tariff a right of storage, he is entitled to the use of such privilege, though it may be later canceled out of the tariff before the time allowed for the exercise of such right has expired. *Interstate Remedy Co. v. American Express Co.* 436 (439).

Fruit, at produce yards in Pittsburg not unreasonable. *Wilson Produce Co. v. Pa. R. R. Co.* 116.

After expiration of free time for unloading of flour in Philadelphia. *Brey v. P. R. R. Co.* 497.

STOVES. See **COMMODITIES**.

STRAWBERRIES. See **COMMODITIES**.

STRUCTURAL IRON. See **COMMODITIES**.

SUBSTITUTION OF TONNAGE.

Hay, from Illinois to St. Louis, reconsigned to southeastern territory at balance of through rate from Kansas to destination; such substitution of tonnage can not be sanctioned. *Rodehaver v. M. K. & T. Ry. Co.* 146.

Grain at Nashville under reshipping and rebilling privilege. *Duncan & Co. v. N. C. & St. L. Ry. Co.* 590 (598).

SUGAR. See **COMMODITIES**.

SULPHURIC ACID. See **COMMODITIES**.

SUPPLEMENTAL CLAIM.

Under former case. *Humbird Lumber Co. v. Nor. Pac. Ry. Co.* 449.

SUPPLEMENTAL COMPLAINT.

Petition for entertaining denied. *Pacific Coast Lumber Manufacturers' Assn. v. Nor. Pac. Ry. Co.* 465.

SWITCH CONNECTION.

Commission has no authority to order construction of *private side track* by railroad company, but its authority is limited to ordering a carrier to make a "switch connection" *with* a private side track. *Winters Metallic Paint Co. v. C. M. & St. P. Ry. Co.* 587.

SWITCHING CHARGE.

Where carrier absorbs switching charges on carload shipments and furnishes two cars, under rule making rate same as on one car, switching charge should be absorbed on both cars. *Milwaukee Falls Chair Co. v. C. M. & St. P. Ry. Co.* 217 (218).

TAN BARK. See **COMMODITIES.**

TANNING OUTFIT. See **COMMODITIES.**

TARE WEIGHT.

Error in calculating, resulting in overcharge; reparation awarded. *Milwaukee Falls Chair Co. v. C. M. & St. P. Ry. Co.* 217.

TARIFF.

A schedule of rates extended by carrier to shipping public may be canceled upon giving thirty days' notice in conformity with law. But such cancellation is not to be construed as a withdrawal of all rights arising under such tariff to those who have availed themselves of its provisions prior to date such tariff dies. *Interstate Remedy Co. v. American Express Co.* 436 (438).

Rate once in effect continues to be lawful rate until canceled. Subsequent tariff not canceling previous rates can not carry new rates into effect; and silence of subsequent tariff not accepted as lawful cancellation of previous rates. *New Albany Box & Basket Co. v. Ill. Cent. R. R. Co.* 315.

Obligation to carry on basis of published rates and minimum weights ought to have been covered in tariffs; and tariffs were unreasonable in not containing such provision when shipments were made. Reparation ordered. *Kaye & Carter Lumber Co. v. Minn. & Int. Ry. Co.* 285 (287).

While shipper is put upon notice of rate by publication of tariff, it is not held that shipper must determine for himself the lawfulness of rate, regulation, or practice, upon his peril. *Interstate Remedy Co. v. American Express Co.* 436 (439).

Distance tariff to be applied only when no other rates are provided, or when, under special provision in tariff therefor, they make lower than specific rate shown in same tariff. *Lee-Warren Milling Co. v. C. R. I. & P. Ry. Co.* 422 (423).

Publication will be useless if interpretation is to be dependent upon tradition and arbitrary practices of general freight office. *Newton Gum Co. v. C. B. & Q. R. R. Co.* 341 (346).

Provided for rate charged, but were in an incomplete, inaccurate, and uncertain condition, and what they provided for was not what carriers intended to provide. *Du Pont de Nemours Powder Co. v. N. Y. N. H. & H. R. R. Co.* 351 (352).

Proportional rate published; this did not, however, make it a legal rate, in view of the existence of a published through rate. *Lindsay Bros. v. B. & O. S. W. R. R. Co.* 6 (8).

Where elevation is included in rate, tariff invariably so specifies, and should so specify, according to sixth section. *Ames Brooks Co. v. Rutland R. R. Co.* 479 (481).

Carrier may not plead unlawfulness of its tariff to avoid extending benefit thereof to a shipper. *Interstate Remedy Co. v. American Express Co.* 436 (439).

To be construed according to their language. Intention of framers and practice of carriers do not control. *Newton Gum Co. v. C. B. & Q. R. R. Co.* 341.

TARIFF—Continued.

Misconstruction creating undercharge; case submitted for arbitration; carrier found entitled to collect. *Davies v. Ill. Cent. R. R. Co.* 376.

Clerical error resulting in high rate corrected and reparation awarded. *Windsor Milling & Elevator Co. v. Colo. & So. Ry. Co.* 349.

Typographical error, resulting in excessive rate, corrected, and reparation ordered. *Goddard Co. v. C. C. C. & St. L. Ry. Co.* 298.

Is as much a part of the law as though it were read into the law itself. *Interstate Remedy Co. v. American Express Co.* 436 (437).

TEE RAILS. See COMMODITIES.**TERMINAL CHARGE.**

Carrier has right to impose such charges at its produce terminal as will render that terminal available for the purpose for which it was intended. *Wilson Produce Co. v. Pa. R. R. Co.* 116.

TERMINAL FACILITIES.

Carrier must hold itself impartially as between shippers and give to each equal terminal facilities and service. *Enterprise Fuel Co. v. Pa. R. R. Co.* 219 (224).

TEST CASE.

Coal rates, Pocahontas district (Va.) to Winston-Salem and Durham, N. C. *Board of Trade of Winston-Salem v. N. & W. Ry. Co.* 12.

TESTING THE MARKET.

Shipper routed via high route to test market at intermediate point; no refund on claim for misrouting. *Council v. St. L. & S. F. R. R. Co.* 188.

THROUGH AND LOCAL.

Passenger may properly pay fare to state line and again from state line to destination, though he thereby obtains through transportation for less than published through rate, and though deliberately seeking this means of obtaining transportation at less than through rate. *Kurtz v. Penn. Co.* 410 (413).

Shipment consigned to consignor at intermediate point and, without payment of charges, reconsigned to destination; combination of locals lower than through rate, but latter must be applied. *Wood Butter Co. v. C. C. C. & St. L. Ry. Co.* 374.

That through rate should not exceed sum of locals is a doctrine well established, but it does not follow as a corollary that the sum of locals should always be reduced to equal through rate. *Williams Co. v. V. S. & P. Ry. Co.* 482 (485).

So long as railroad companies can properly maintain joint through rate higher than combination of locals, they may insist that through Pullman space shall only be sold upon presentation of through ticket. *Kurtz v. Penn. Co.* 410 (415).

No law, common or statute, under which jobber is entitled to distribute commodities under as low or lower rates as through rates from point of origin to point of consumption. *Williams Co. v. V. S. & P. Ry. Co.* 482 (486).

Shipper can not defeat application of joint through rate by constituting carrier its agent to collect charges to junction and reship to destination. *Stock Yards Cotton & Linseed Meal Co. v. C. M. & St. P. Ry. Co.* 366 (367).

Through rate on oil meal from Minneapolis, Minn., to Milo, Mo., exceeded combination of locals on Kansas City; reparation awarded. *Stock Yards Cotton & Linseed Meal Co. v. C. M. & St. P. Ry. Co.* 366.

Through rate exceeded combination of locals. No evidence submitted to justify. Under circumstances, presumption is that through rate is unreasonable. *Blodgett Milling Co. v. C. M. & St. P. Ry. Co.* 384.

Sixth-class rate, higher than combination of local rates, charged after such class rate had been canceled. *Barrett Manufacturing Co. v. Graham & Morton Transp. Co.* 399.

THROUGH AND LOCAL—Continued.

Through rate exceeded combination of locals, but reparation awarded only down to basis of Commission's order in another case. *Humbird Lumber Co. v. Nor. Pac. Ry. Co.* 449.

Through rate exceeded combination of locals, reparation awarded on combinations presently established. *Winters Metallic Paint Co. v. C. M. & St. P. Ry. Co.* 562. In absence of satisfactory explanation through rate in excess of combination of locals is unreasonable. *Scully Steel & Iron Co. v. L. S. & M. S. Ry. Co.* 358 (359).

In the absence of justifying explanation, a through rate in excess of the sum of the locals is an unreasonable rate. *Lindsay Bros. v. B. & O. S. W. R. R. Co.* 6.

Commission has held in several cases that through passenger rate may be maintained greater than sum of locals. *Kurtz v. Penn. Co.* 410 (412).

Through rate on steel, Buffalo, N. Y., to Watertown, Wis., exceeded combination on Chicago. *Scully Steel & Iron Co. v. L. S. & M. S. Ry. Co.* 358.

Through rate exceeded combination based upon minimums applicable under tariffs naming combination. *Noble v. C. M. & St. P. Ry. Co.* 420.

Through rate exceeded combination of locals. *Alphons Custodis Chimney Construction Co. v. Vandalia R. R. Co.* 600.

Through class rate exceeded combination of local commodity rates. *Dayton Chamber of Commerce v. C. M. & St. P. Ry. Co.* 82.

Almost invariable rule of Commission that through charge must not exceed combination of locals. *Kurtz v. Penn. Co.* 410.

Through rate should not exceed combination of locals. *Moise Bros. Co. v. C. R. I. & P. Ry. Co.* 550 (557).

Through rate exceeded combination of locals. *Smith Manufacturing Co. v. C. M. & G. Ry. Co.* 447.

Through rate exceeded combination of locals. *Lee-Warren Milling Co. v. C. R. I. & P. Ry. Co.* 422.

Through rate into Canada exceeded combination of locals. *Carlin's Sons Co. v. B. & O. R. R. Co.* 477.

Through rate exceeded combination of locals. *Empire Oil Works v. C. M. & St. P. Ry. Co.* 401.

Through rate exceeded combination of locals. *Wells-Higman Co. v. G. R. & I. Ry. Co.* 339.

Through express rate exceeded combination of locals. *U. S. v. Adams Express Co.* 394.

Through rate exceeded combination of locals. *Lindsay Bros. v. G. R. & I. Ry. Co.* 441.

Through rate exceeded combination of locals. *Gilchrist v. L. E. & W. R. R. Co.* 318.

THROUGH RATE. See **JOINT RATE.**

THROUGH RATE AS UNIT. See **UNIT.**

THROUGH ROUTES.

Nor. Pac. Ry. Co., U. P. Ry. Co., and C. & N. W. Ry. Co. ordered to join in sale of through passenger tickets between Seattle and other points in northwest and eastern destinations, via Portland, Oreg., and to accord through facilities, like checking of baggage, over this route. *In re Through Passenger Routes*, 300.

There may be a through route from a given point of origin to a city which is satisfactory, and yet another through route from the same point to another section of the same city be necessary. *Enterprise Fuel Co. v. Pa. R. R. Co.* 219 (222).

A shipper by locating its yard on another line of railroad but at the same transportation point may not compel the establishment of a new through route. *Enterprise Fuel Co. v. Pa. R. R. Co.* 219 (224).

THROUGH ROUTES—Continued.

In order to defeat jurisdiction of Commission existing route must be "reasonable or satisfactory." This is equivalent to "reasonably satisfactory." *In re Through Passenger Routes*, 300 (302).

Ordered from Louisville, Colo., via Denver, to points on C. R. I. & P. Ry. Co. in Kansas, Nebraska, Missouri, Iowa, and Oklahoma. *Northern Coal & Coke Co. v. Colo. & So. Ry. Co.* 369.

A shipper is not entitled to a through route merely because he may not be as conveniently served by one railroad as by another. *Enterprise Fuel Co. v. Pa. R. R. Co.* 219.

Established on lumber and other forest products between certain points in Idaho and Montana and certain points in North Dakota. *Kalispell Lumber Co. v. G. N. Ry. Co.* 164.

Act empowers Commission to establish through route and joint rate, provided no satisfactory through route already exists. *In re Through Passenger Routes*, 300 (301).

St. Louis reaches St. Paul and Winona by direct through routes. Distinguished from Indianapolis. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 276 (282).

Commission may establish a through route and joint rate, provided no reasonable or satisfactory through route exists. *Enterprise Fuel Co. v. Pa. R. R. Co.* 219 (220).

If a reasonable and satisfactory through route between two points does exist, another route can not be compelled. *Enterprise Fuel Co. v. Pa. R. R. Co.* 219 (222).

It can not be said that railroads must unite in through routes between all points. *Enterprise Fuel Co. v. Pa. R. R. Co.* 219 (222).

Reasonable through route found in existence. *Delray Salt Co. v. C. St. P. M. & O. Ry. Co.* 507.

TIES. See **COMMODITIES**.

TON PER MILE.

A mere comparison of revenue per ton per mile, even when showing higher from complainant's mines, not conclusive as applied in a country where nature has interposed such obstacles as to make operating conditions so dissimilar. *Grand Junction Mining & Fuel Co. v. Colo. Mid. Ry. Co.* 452 (457).

Rate-per-ton-per-mile rule excludes consideration of other circumstances and conditions, and can not be accepted as controlling in determining the reasonableness of rates. *Cedar Hill Coal & Coke Co. v. Colo. & So. Ry. Co.* 387.

A rate yielding 9 mills per ton per mile is comparatively high for any low-grade traffic. *Board of Trade of Winston-Salem v. N. & W. Ry. Co.* 12 (16).

Comparison made with rates per ton per mile from other coal-producing points. *Grand Junction Mining & Fuel Co. v. Colo. Mid. Ry. Co.* 452.

Coal, Pocahontas district to Virginia and North Carolina points. *Board of Trade of Winston-Salem v. N. & W. Ry. Co.* 12 (13).

As mileage increases total cost increases, but cost per ton per mile decreases. *Williams Co. v. V. S. & P. Ry. Co.* 482 (487).

Class rates, Indianapolis and Chicago to Missouri River. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 58 (59).

TONNAGE. See **SUBSTITUTION; VOLUME**.

TRACKAGE RIGHTS.

Joint rates established by trackage agreement over intermediate line. *Cedar Hill Coal & Coke Co. v. A. T. & S. F. Ry. Co.* 402.

TRACK STORAGE.

Charges on fruit at produce yards in Pittsburg not unreasonable. *Wilson Produce Co. v. Pa. R. R. Co.* 116.

TRANSCONTINENTAL FREIGHT BUREAU.

Commodity rates established by not to be construed by Western Classification in absence of tariff provision. *Newton Gum Co. v. C. B. & Q. R. R. Co.* 341.

TRANSIT PRIVILEGE. See also **MILLING IN TRANSIT.**

Argued that Commission is without power to direct carrier to grant transit privilege.

There can be no question as to right and power of Commission to order removal of unjust discrimination and to prescribe such reasonable rates and regulations as will effect such removal. *Douglas & Co. v. C. R. I. & P. Ry. Co.* 232.

It might be reasonable to withhold transit privilege from product essentially different from raw material and other products thereof which are accorded transit rates. *Douglas & Co. v. C. R. I. & P. Ry. Co.* 232.

TRAPS. See **COMMODITIES.****TWO CARS FOR ONE.**

Where carrier absorbs switching charges on carload shipments and for its own convenience furnishes a shipper two cars, making rate same as on one car, switching charges should be absorbed on both cars. *Milwaukee Falls Chair Co. v. C. M. & St. P. Ry. Co.* 217 (218).

Reparation awarded complainant because of excess weight charged on shipment, where two cars of smaller size but larger aggregate minimum weight were furnished instead of one car of smaller minimum weight ordered, which would have held the shipment. *Racine-Sattley Co. v. C. M. & St. P. Ry. Co.* 488.

Carriers supplied cars of larger dimension, but protected minimum weights of sizes ordered. Shipment reshipped on separately established tariff of connecting line which declined to protect minimum weights. Under circumstances, complaint dismissed. *Slimmer & Thomas v. Pa. Co.* 531.

If shipment in excess of capacity of one car, carload rate applies on whole shipment. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 56 (67).

Indianapolis to Arkansas, Louisiana, Oklahoma and Texas points. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 254.

TYPOGRAPHICAL ERROR. See **TARIFF.****UNDERCHARGE.**

Commission makes no order for reparation on account of alleged unreasonable rate where charges have not been paid, though property replevined under bond. *Bluff City Oil Co. v. St. L. I. M. & S. Ry. Co.* 296 (297).

Arising from construction of tariff; case submitted by stipulation, and, upon record, carrier found entitled to collect. *Davies v. Ill. Cent. R. R. Co.* 376.

UNIFORM CLASSIFICATION.

Difficulties will present themselves until a uniform classification has been adopted.

Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co. 56 (65).

UNIT.

A proportional rate means a part of or a remainder of the through rate or it means nothing at all, and in a case of this kind there must be an examination and consideration of the entire rate from point of production to ultimate destination. *Kansas City Transportation Bureau v. A. T. & S. F. Ry. Co.* 195 (201).

Law does not deal with carriers collectively as single unit or system, but its commands are directed to each with respect of the service which it is required to perform. *Chicago Lumber & Coal Co. v. Tioga Southeastern Ry. Co.* 323.

UNREASONABLE RATE. See also **PROHIBITORY RATE.**

If complainant labored under some form of discrimination, or rates were so high as to unduly burden movement of traffic, Commission's duty to interfere, though that did involve reduction of rates. *Association of Union Made Garment Manufacturers v. C. & N. W. Ry. Co.* 405 (409).

Rates on parts of defendant's line forced down to a very low point no justification for unreasonable rates to another point. *Board of Trade of Winston-Salem v. N. & W. Ry. Co.* 12 (16).

UNREASONABLE RATE—Continued.

Unfavorable financial condition of defendant can not lawfully be remedied by imposing unreasonable rates. *Railroad Commissioners of Florida v. S. A. L. Ry.* 1 (5).

No item in tariff exactly applicable. In any event, rate charged was unreasonable. *Carstens Packing Co. v. C. M. & St. P. Ry. Co.* 469 (470).

Low State rate no reason for exacting unreasonable interstate rate. *Fort Dodge Commercial Club v. Ill. Cent. R. R. Co.* 572 (579).

USE.

Use to which articles are put, without difference in articles and without dissimilarity in conditions under which transportation is performed, not lawful basis for difference in charge. *Davis v. West Jersey Express Co.* 214 (216).

VALUATION, LIMITED. See RELEASED RATE.**VALUE. See also MEASURE OF RATE.****VALUE.**

Wherever the transportation charge is by weight and the weight of the cheaper grade commodity is substantially the same the poor man pays more freight in proportion to the value of the service than he who consumes the costlier article. *Association of Union Made Garment Manufacturers v. C. & N. W. Ry. Co.* 405 (406).

While Commission does not consider value as sole test of reasonableness of classification ratings, it does appear that ground iron ore is such a low-grade commodity that it can not move unless accorded comparatively low rates. *Winters Metallic Paint Co. v. C. M. & St. P. Ry. Co.* 587 (588).

Movement of traffic encouraged and increased when carriers adjust charges to meet mercantile interests, but they are not obliged to equalize the value of commodities in their final distribution. *Chicago Lumber & Coal Co. v. Tioga Southeastern Ry. Co.* 323.

Argued that starch is more valuable than corn and should take higher rates. If this is sound, it is equally so as to oatmeal and oats, flour and wheat, etc. *Douglas & Co. v. C. R. I. & P. Ry. Co.* 232 (243).

Ad valorem rates suggested but, being resisted by carriers, not insisted upon. *Association of Union Made Garment Manufacturers v. C. & N. W. Ry. Co.* 405 (408).

Woolen garments very much greater, on the average, than cotton garments. *Association of Union Made Garment Manufacturers v. C. & N. W. Ry. Co.* 405 (406).

Manufactured article should pay a higher rate than the raw material. *Association of Union Made Garment Manufacturers v. C. & N. W. Ry. Co.* 405 (406).

Trees in Kalispell affected by great altitude, making value less than Spokane product. *Kalispell Lumber Co. v. G. N. Ry. Co.* 164 (169).

Raw material compared with manufactured product. *Association of Union Made Garment Manufacturers v. C. & N. W. Ry. Co.* 405.

VEGETABLES. See COMMODITIES.**VEHICLES. See COMMODITIES.****VESTED RIGHTS. See also INDUSTRIAL RATES.**

We are not permitted so to narrow our view of all interests involved as to look only to the interests of a particular class in the community, and this for sole purpose of vesting in that class what they claim to be their inherent rights, more especially where the enjoyment thereof is to be at the expense of the community at large. *Duncan & Co. v. N. C. & St. L. Ry. Co.* 590 (595).

VOLUME.

Greater density of population on east side (Mississippi River) and development is such that volume of traffic exceeds that on west side. This fact greatly contributes to ability of eastern lines to handle business with greater advantage and profit. *Chicago Lumber & Coal Co. v. Tioga Southeastern Ry. Co.* 323 (328).

Traffic into Oklahoma and Texas increasing at rate not exceeded in any other section of country; therefore some reduction should be made in apple rates. *Ozark Fruit Growers Assn. v. St. L. & S. F. R. R. Co.* 134 (139).

VOLUME—Continued.

Cheese tonnage from southwestern Wisconsin extraordinarily dense, which, all other elements being equal, should cause the rates to be lower. *Railroad Commission of Wisconsin v. C. & N. W. Ry. Co.* 85 (90).

A larger volume of tonnage tends to lower rates. *Moise Bros. Co. v. C. R. I. & P. Ry. Co.* 550 (555).

VOLUNTARY ACTION.

Carriers might establish same rates from Moundville as from eastern Ohio district, and would not be obliged to give same weight to every difference in circumstance and condition as between the two fields which Commission must give when called upon to determine whether alleged discrimination is or is not unjust or undue. *Hitchman Coal & Coke Co. v. B. & O. R. R. Co.* 512 (521).

One thing for carrier to voluntarily reduce rates not excessive for the service performed solely to meet competitive and commercial conditions, but a different thing for Commission to compel such reductions regardless of transportation conditions. *Chicago Lumber & Coal Co. v. Tioga Southeastern Ry. Co.* 323 (334).

New short line meets rate voluntarily established and long maintained by long line.

If assumed compensatory for long line, it follows it is compensatory for materially shorter line. *Railroad Commissioners of Florida v. S. A. L. Ry.* 1 (5).

Differentiation by the carriers of carloads from less than carloads in the application of rates may be warranted under certain conditions. *Duncan & Co. v. N. C. & St. L. Ry. Co.* 590 (593).

Carriers may voluntarily do many things which they may not lawfully be compelled to do. *Commercial Club of Hattiesburg v. Alabama Great Southern R. R. Co.* 534.

Carrier may for competitive reasons voluntarily do things which it may not lawfully be compelled to do. *Swift & Co. v. C. & A. R. R. Co.* 426 (428).

Rate voluntarily reduced because it was unreasonable. Reparation claimed and awarded. *Tully Grain Co. v. Ft. S. & W. R. R. Co.* 28.

WAGONS. See COMMODITIES.

WAREHOUSES.

Law does not require carrier to give its cars and tracks under any terms for use as warehouses or places of business. *Wilson Produce Co. v. Pa. R. R. Co.* 116.

WATER, MINERAL. See COMMODITIES.

WATER COMPETITION

Not unduly discriminatory to haul traffic to and from Gulf ports at lower rates than to and from Hattiesburg. Controlling effect of Mississippi River and Gulf justify that adjustment. *Commercial Club of Hattiesburg v. Alabama Great Southern R. R. Co.* 534 (545).

If water competition at given point compels carrier to discriminate in rates against a point not so favorably situated, discrimination must not be greater than dissimilarity of circumstances demand. *Planters Gin & Compress Co. v. Y. & M. V. R. R. Co.* 131 (133).

While it may be availed of by carrier as its justification for rates lower than would otherwise be lawful, it is not in itself a ground upon which a shipper may demand a lower rate. *Lindsay Bros. v. B. & O. S. W. R. R. Co.* 6.

At given point may render circumstances and conditions dissimilar and justify discrimination against points where such competition is not controlling. *Planters Gin & Compress Co. v. Y. & M. V. R. R. Co.* 131 (133).

Rate to San Francisco made under circumstances of water competition, and therefore may be lower than to intermediate points where such competition does not exist. *Rogers v. O. R. R. & N. Co.* 424 (425).

Factor to be considered in making rates from Chicago and St. Louis to St. Paul is competition of lake lines from Chicago. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 276 (281).

WATER COMPETITION—Continued.

Carrier may make lower rates to meet water competition, and somewhat higher rates to intermediate points at which same competition does not exist. *Valley Flour Mills v. A. T. & S. F. Ry. Co.* 73 (78).

St. Louis to St. Paul affects rail rates. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 276 (280).

WEATHER.

Severe, demurrage accruing on coal at St. George, Staten Island, N. Y. *Hutchinson-McCandlish Coal Co. v. B. & O. R. R. Co.* 360.

WEIGHT. See also MINIMUM WEIGHT; TARE WEIGHT.

Wherever the transportation charge is by weight and the weight of the cheaper grade is substantially the same the poor man pays more freight in proportion to the value of the service than he who consumes the costlier article. *Association of Union Made Garment Manufacturers v. C. & N. W. Ry. Co.* 405 (406).

When car is weighed at origin and weight stated in bill of lading, shipper has right to rely on that weight, subject to correction only by proof of correct weight. *Duluth Log Co. v. C. St. P. M. & O. Ry. Co.* 38 (39).

Cabbages, ascertained by estimating on basis of average weight contained in standard crate. *Davies v. Ill. Cent. R. R. Co.* 376.

Raw material compared with manufactured product. *Association of Union Made Garment Manufacturers v. C. & N. W. Ry. Co.* 405.

Carload lumber from Kalispell much heavier than from Spokane. *Kalispell Lumber Co. v. G. N. Ry. Co.* 164 (170).

WHEAT. See COMMODITIES.**WIRE. See COMMODITIES.****WOODENWARE. See COMMODITIES.****WORDS AND PHRASES.**

“Legal” distinguished from “lawful.” *Arkansas Fuel Co. v. C. M. & St. P. Ry. Co.* 95 (97).

“Reasonable or satisfactory” equivalent to “reasonably satisfactory.” *In re Through Passenger Routes.* 300 (302).

“Shipper.” Difficult to distinguish between “shipper” and one who purchases corn and hires carrier to transport it. *Douglas & Co. v. C. R. I. & P. Ry. Co.* 232 (242).

YELLOW PINE LUMBER. See COMMODITIES.

